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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 272

NATIONAL LICORICE COMPANY, PETITIONER,

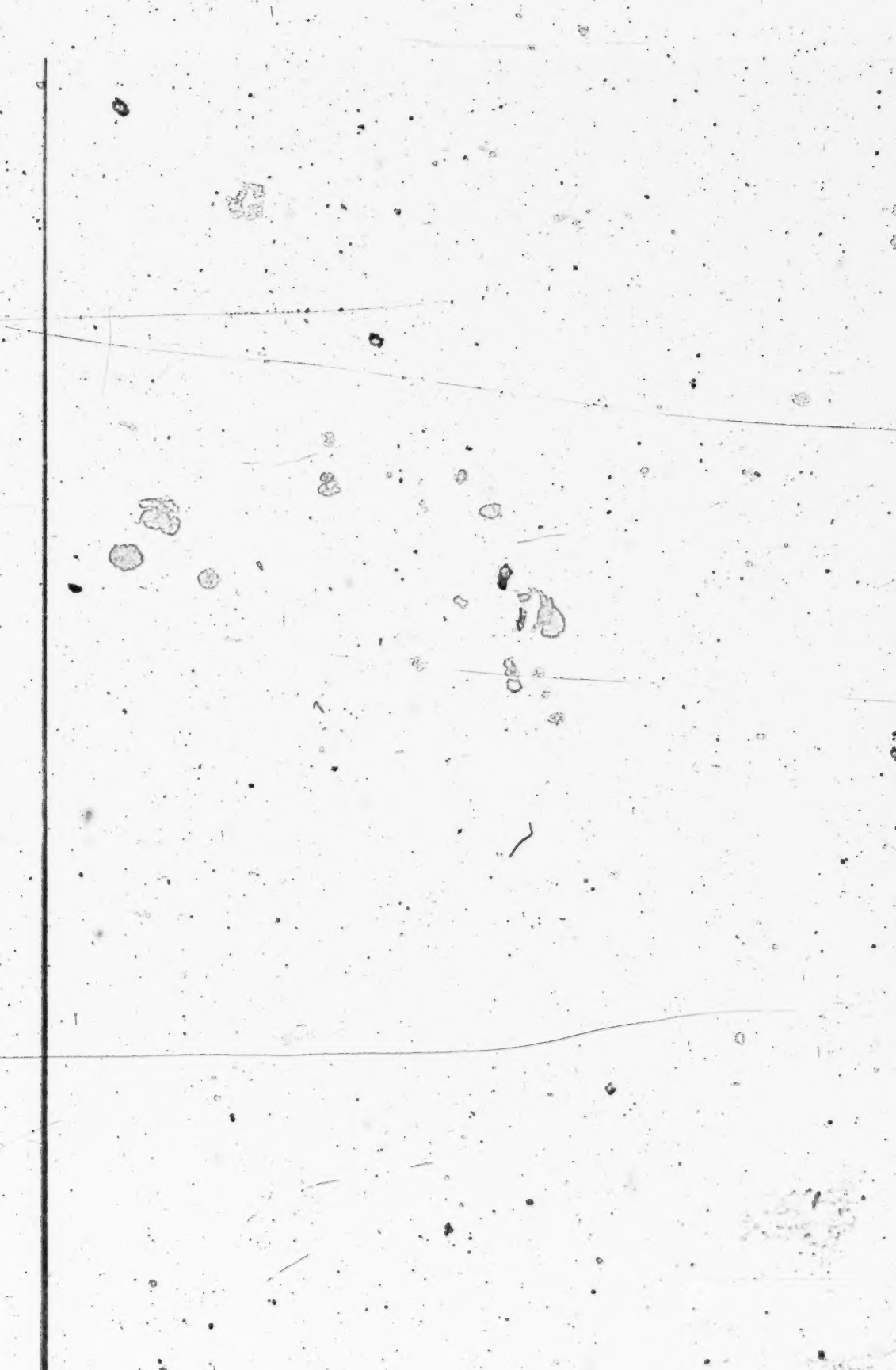
vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 7, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.



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IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

No. .....

OCTOBER TERM, 1937.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—against—

NATIONAL LICORICE COMPANY,

Respondent.

Certificate of the National Labor Relations Board.

The National Labor Relations Board, by its Assistant Secretary, duly authorized by Section I of Article VI, of Rules and Regulations of the National Labor Relations Board, Series 1, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of National Licorice Company and Bakery & Confectionery Workers International Union of America, Local 405, Greater New York and Vicinity," the same being Case No. C-410 before said Board, such transcript including the pleadings, testimony, and evidence upon which the order of the Board was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge filed by Bakery & Confectionery Workers International Union of America, Local 405, and sworn to August 2, 1937.

Certificate of the National Labor Relations Board.

2. Copy of amended charge filed by said union and sworn to August 2, 1937.

4

3. Copy of complaint and notice of hearing issued by the National Labor Relations Board October 7, 1937.

4. Copy of telegram, dated October 11, 1937, changing hour of hearing.

5. Certified copy of order of consolidation and designating H. R. Korey Trial Examiner dated October 9, 1937.

6. Respondent's answer to the complaint, sworn to October 13, 1937.

5

7. Copy of Respondent's motion for bill of particulars and affidavit in support, dated October 11, 1937.

8. Copy of answer and supplementary answer to demand for bill of particulars, dated October 13, 1937.

Documents listed hereinabove under items 1-7, inclusive, are contained in the exhibits and included under the following items:

9. Stenographic transcript of testimony before H. R. Korey, Trial Examiner for the National Labor Relations Board, on October 13, 14, 15, 16, 18, 19 and 20, 1937, together with all exhibits introduced in evidence.

6

10. Copy of Intermediate Report of Trial Examiner Korey dated February 7, 1938.

11. Copy of exceptions to the Intermediate Report filed by Respondent February 18, 1938.

Certificate of the National Labor Relations Board.

12. Copies of letters, dated May 4, 1938, advising parties of right to apply for oral argument or leave to file briefs.

13. Copy of order of severance dated May 11, 1938. 7

14. Copy of notice of hearing for purpose of oral argument dated May 13, 1938.

15. Copy of telegram, dated May 13, 1938, fixing oral argument and notifying parties of date for submission of briefs.

16. Copy of Respondent's telegram, dated May 18, 1938, waiving appearance at oral argument. 8

17. Copy of union's telegram, dated May 19, waiving appearance at oral argument.

18. Copy of telegram, dated May 19, 1938, cancelling oral argument.

19. Copy of decision, findings of fact, conclusions of law, and order of the National Labor Relations Board issued May 31, 1938, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF, the Assistant Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 30th day of August, 1938. 9

(Sgd) BEATRICE M. STERN,

BEATRICE M. STERN,

Assistant Secretary,

NATIONAL LABOR RELATIONS BOARD.

(Seal)

Petition for Enforcement of Order of National Labor Relations Board.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

OCTOBER TERM, 1937.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—against—

NATIONAL LICORICE COMPANY,

Respondent.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The National Labor Relations Board, hereinafter called the Board, pursuant to the authority conferred upon it by an Act of Congress approved July 5, 1935 (49 Stat. 449, c. 372, 29 U. S. C. 151 *et seq.*), known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by it in a proceeding against respondent, National Licorice Company. Said proceeding is known upon the records of the Board as Case No. C-410, the title thereof being "In the Matter of National Licorice Company and Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity."

In support of this petition, the Board respectfully shows:

(1) Respondent is and at all times hereinafter mentioned was a corporation organized under and existing by virtue of

the laws of the State of New York, having a plant in Brooklyn, New York, where the unfair labor practices occurred. 13

(2) By reason of the matters alleged in paragraph (1) hereof, this Court has jurisdiction of this petition by virtue of section 10(e) of the National Labor Relations Act.

(3) A petition for investigation and certification having been filed by Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity, hereinafter called the Union, with the Board through its Regional Director for the Second Region and a charge (erroneously entitled "amended charge") having thereafter, on August 13, 1937, been filed by the Union with the Board through said Regional Director, the Board, on October 7, 1937, issued, by said Regional Director, a complaint in said Case No. C-410, alleging that respondent had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the Act and, on October 8, 1937, made an order directing investigation and hearing with respect to said petition for investigation and certification, known upon the records of the Board as Case No. R-800. 14

(4) Thereafter, on October 9, 1937, the Board made an order consolidating said Cases Nos. C-410 and R-800 for the purpose of hearing and designating H. R. Korey Trial Examiner. 15

(5) Thereafter, on October 13, 1937, respondent filed an answer to said complaint.

(6) Thereafter, on October 13 through 16 and 18 through 20, 1937, a hearing was held before said Trial Examiner in New York, New York. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded all parties. At the commencement of the hearing, it was agreed not to consider at this hearing the petition in said Case No. R-800. After said hearing, respondent submitted a memorandum.

(7) Thereafter, said Trial Examiner filed an Intermediate Report, dated February 7, 1938, in which he found that respondent had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the Act and made certain recommendations. Thereafter, respondent filed exceptions to said Intermediate Report, said exceptions being dated February 17, 1938.

(8) Thereafter, on May 4, 1938, respondent and the Union were given the privilege, within ten days from the receipt of notice, to apply for oral argument or permission to file briefs. Thereafter, on May 11, 1938, the Board received from the Union a request for such privilege.

(9) On May 11, 1938, the Board made an order severing for all purposes Case No. C-410 from Case No. R-800 *nunc pro tunc* as of October 13, 1937, the date of the commencement of said hearing.

(10) Thereafter, on May 13, 1938, the Board issued a notice of hearing for the purpose of oral argument in said Case No. C-410, said hearing to be held on May 19, 1938, before the Board in Washington, D. C.

(11) Thereafter, argument, referred in paragraphs (8) and (10) hereof, was waived pursuant to two telegrams received on May 18, 1938 and May 19, 1938, from respondent's attorneys and the Union, respectively.

(12) Thereafter, on May 31, 1938, the Board, being sufficiently advised in the premises and having duly considered the matter and being of the opinion, upon all the testimony and evidence, that respondent had engaged and was then engaging in certain unfair labor practices affecting commerce within the meaning of the Act, affirmed the rulings of said Trial Examiner and found said exceptions to said Intermediate Report without merit and duly stated its findings of fact and conclusions of law and issued the following order, directed to respondent and its agents, successors, and assigns:

ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, National Licorice Company, and its agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of The Collective Bargaining Committee of National Licorice Company or with the formation or administration of any other labor organization of its employees, and from contrib-

uting financial or other support to The Collective Bargaining Committee of National Licorice Company or any other labor organization of its employees;

(b) From recognizing The Collective Bargaining Committee of National Licorice Company as the representative of any of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work;

(c) From giving effect to its contracts with The Collective Bargaining Committee of National Licorice Company and its individual contracts of employment with its employees;

(d) From refusing to bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its production employees at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory and office employees, salesmen and truck drivers;

(e) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from The Collective Bargaining Committee of National Licorice Company as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and completely disestablish The Collective Bargaining Committee of National Licorice Company as such representative;

(b) Personally inform in writing the members of The Collective Bargaining Committee of National Licorice Company and each of its employees who has signed an individual contract of employment, that such contract constitutes a violation of the National Labor Relations Act and that the respondent is therefore obliged to discontinue such contract as a term or condition of employment; and the employees are released from its obligations and the respondent will no longer demand its performance;

(c) Upon request bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its production employees at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory and office employees, salesmen and truck drivers, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding

is reached on any of such matters, embody said understanding in an agreement for a definite term to be agreed upon, if requested to do so by said Union;

(d) Immediately post notices to its employees in conspicuous places throughout the respondent's Brooklyn, New York, plant, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating: (1) that the respondent will cease and desist as aforesaid; (2) that The Collective Bargaining Committee of National Licorice Company is disestablished as the representative of any of its employees for the purpose of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and that the respondent will refrain from recognition thereof; (3) that the individual contracts of employment entered into between the respondent and some of its employees are in violation of the National Labor Relations Act and void and of no effect; and that the respondent will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees;

(e) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(13) Thereafter, on May 31, 1938, the decision and order herein was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to

Kotzen, Mann & Siegel, respondent's attorneys, in New York, New York.

(14) Said order of the Board, set forth in paragraph (12) hereof, is and at all times since its issuance has been in full force and effect.

WHEREFORE, the Board petitions this Honorable Court for the enforcement of its order of May 31, 1938, set forth in paragraph (12) hereof, and, pursuant to section 10 (e) of the National Labor Relations Act, is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law and order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript and upon the order made thereupon, set forth in paragraph (12) hereof, a decree enforcing in whole said order of the Board and requiring respondent and its officers, agents, successors, and assigns to comply therewith.

(Sgd) J. WARREN MADDEN,
Chairman.

(Sgd) DONALD WAKEFIELD SMITH,
Member
NATIONAL LABOR RELATIONS BOARD.

Dated at Washington, D. C. this
29th day of August, 1938.

CHARLES FAHY,
General Counsel.

Petition for Enforcement of Order of National Labor Relations Board.

District of Columbia, *ss.*:

J. Warren Madden and Donald Wakefield Smith, being first duly sworn, state that they are Chairman and Member, respectively, of the National Labor Relations Board; that they have read the foregoing petition subscribed by them and have knowledge of the contents thereof; and they further on oath say that the statements made therein are true to the best of their knowledge and belief.

(Sgd) J. WARREN MADDEN,
Chairman.

(Sgd) DONALD WAKEFIELD SMITH,
Member.

Subscribed and sworn to before me this 29th day of August, 1938.

JOHN E. LAWYER
Notary Public, District of Columbia
My commission expires September 8, 1939

(Seal)

Hearing Before Board.

[1] BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY.

Room 419, Old Post Office Building,
New York, New York,
Wednesday, October 13, 1937.

The above-entitled matter came on for hearing, pursuant to notice, at 2:00 o'clock p. m.

Before:

H. R. KOREY, ESQ.,

Trial Examiner.

APPEARANCES:

CHARLES E. GRAHAM, ESQ. (233 Broadway, New York, New York), on behalf of the National Labor Relations Board.

KOTZEN, MANN & SIEGEL, ESQS. (51 Chambers Street, New York, New York), attorneys for the Respondent, by
ABRAHAM MANN, ESQ., and
JOSEPH YASPAN, ESQ., *of counsel.*

KALMAN SKLAR, ESQ. (521 Fifth Avenue, New York, New York), appearing for Bakery & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity.

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[2] PROCEEDINGS

Trial Examiner Korey: Are we ready to proceed, gentlemen?

This hearing is now in session.

Mr. Mann: May the record indicate now, Mr. Examiner, we are filing an original and three copies of the answer of the respondent, National Licorice Company, with you, and with Mr. Graham, attorney for the Board?

Our time to answer expires today.

May it also be noted that we are serving a copy of the answer on Mr. Galvin, representing the union.

Trial Examiner Korey: I wish to inform all the parties that the Board's reporter has the only official transcript of the proceedings. Citations and briefs or arguments based upon the record, must cite the official transcript in all reference to the record.

The Board will not certify any transcript other than its official transcript for use in any court litigation.

Colloquy.

Mr. Graham: I have here a copy of the certification prepared in this case, containing the charge amended, complaint, 43
affidavit of service, affidavit and notice of motion for bill of particulars, telegraphic advice setting time of hearing for 2:00 o'clock in the afternoon, order of consolidation and designating Trial Examiner and a copy of the Rules & Regulations, which I would like to offer in [3] evidence as Board's Exhibit No. 1.

Mr. Mann: May I see it?

Mr. Graham: Certainly.

(The document was handed to Mr. Mann.)

44

Mr. Mann: I object to this insofar as it contains an order of consolidation for two purported cases. The only notice that we have had up to about five minutes ago was notice of the complaint known as Case No. II-C-740.

This paper here purports to consolidate Case No. II-C-740 with Case No. II-R-350. As to that, Mr. Examiner, especially as to the latter part, there is no such proceeding pending here as far as I know, as Case No. II-R-350.

We have never been served with any papers on that, and, of course, I take it there cannot be a consolidation of something on which we have never received notice or papers.

I object to the order of consolidation. 45

Trial Examiner Korey: What have you to say, Mr. Graham?

Mr. Graham: Your objection is quite well taken, Mr. Mann. It is necessary in order that the order designating a Trial Examiner and authorizing the hearing be included in the certification, that the reference to the consolidation be also so included, because they are on the same document.

I will say at this time, however, that it is not intended that the admission into evidence of the certification [4] shall
46 indicate that this hearing at this time shall go into the question of the petition in any way, and that if the issue as to the petition is to be raised, it will be raised only as a result of the notice of hearing which I have given to you, on a day to be set later.

Trial Examiner Korey: Mr. Mann, excluding II-R-350, you have no objection to the certification otherwise?

Mr. Mann: No, except I would like to include the answers we have just filed. They do not appear there, so I think they ought to go in.

47 Mr. Graham: They do not appear for somewhat similar reasons.

Mr. Mann: That is right. If you put in the answers, I have no objection to it otherwise.

Mr. Graham: I will state I have received and been served with an answer by the National Licorice Company, which I have here and which I am willing to have included in the certification or added to that exhibit, Board's Exhibit No. 1.

Trial Examiner Korey: With such proviso, we will admit the certification herein as Board's Exhibit No. 1.

48 (Thereupon the document above referred to was marked as Board's Exhibit No. 1, in evidence.)

Mr. Graham: I have here a copy of a stipulation entered into between the National Licorice Company and the Board [5] relating to the question of interstate commerce.

This stipulation has been signed by counsel for the com-

pany, and by the attorney for the Board in behalf of the Regional Attorney, David Moscowitz. 49

I would like to enter this stipulation into evidence as Board's Exhibit No. 2.

Mr. Mann: No objection.

Trial Examiner Korey: There being no objection, it will be so marked.

(Thereupon the document above referred to was marked as Board's Exhibit No. 2, in evidence.)

Mr. Graham: In further connection with the interstate commerce feature of the case, as well as with the purpose 50 of developing the statistical business background of the company involved, I have here a statement prepared by the Division of Economic Research of the National Labor Relations Board, including a statement as to the sources of licorice, statement as to the scope of operations of the National Licorice Company, and an advertisement used by the company in the form of a photostatic copy thereof, which I would like to offer in evidence to be labeled Board's Exhibit No. 3.

This is the document which I just showed to Mr. Mann.

Mr. Mann: No objection.

Trial Examiner Korey: There being no objection, it will [6] be marked Board's Exhibit No. 3. 51

(Thereupon the document above referred to was marked Board's Exhibit No. 3, in evidence.)

Mr. Graham: I have here a photostatic copy—

Mr. Mann: That is an application and registration—application for trademark.

Article II of the Rule of the Board you have a specific heading called "Charge."

Then you have a specific heading called "Complaint". Then you have another one called "Answer" and "Motions" and so on. It seems to me that when the National Labor Relations Board adopted these rules, they had something definite in mind when they took it upon themselves to have the charge as forming a basis of proceedings before this Board, as [9] something which was very important because they devote—as you will notice, Mr. Examiner—four sections to that.

For instance, Section 4 of Article II says, "Such charge shall contain the following: The full name and address of the person or labor organization making the charge."

That is Subdivision (a). Subdivision (b)—"The full name and address of the person against whom the charge is made hereinafter referred to as the respondent."

That has been complied with.

> "(c) A clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of their occurrence."

It seems to me that that last language is a complete answer to what has been set forth here by the Board in their own contention that we are not entitled to a bill of particulars of the charge.

In other words, if the charge does not give everything that the rules say, that it must give, then it is a defective charge. Maybe it can be cured by a bill of particulars, but certainly

after failing to comply with the provisions of the Rules and Regulations, it cannot be said by refusing to give it after a demand has been made where it has been omitted, that that is an unfair or improper request. 61

I say in all—and I urge this very strenuously—when [10] these rules say you have to give the names of the individuals involved, and the time and place of occurrence, I think it means just that and nothing else.

If you will look at the clause, Mr. Examiner, I think you will see that it contains nothing at all. It is couched in the most general terms and, by the way, it is not a charge at all. It is called an amended charge, and I have another motion directed to that. 62

It is very brief and it says this: "The said National Licorice Company has, by means of threats and intimidations, coerced and attempted to coerce its employees into signing individual contracts with the said company."

Right there—who in the National Licorice Company did that? Does not that come directly within the language of Subdivision (c), Section 4, where it says you have to state the names of the individuals involved and the time and place of occurrence?

No time and place of occurrence is stated, not a single name is given. Employees are mentioned, nobody specified. National Licorice Company is mentioned, nobody in that company, which is a big corporation, is mentioned. 63

How can anybody prepare a case for a defense if all those things are omitted?

"—in that the said company has called meetings of its employees."

[11] Who did that? It is not stated.

64 "—and compelled said employees to attend said meetings."

Which employees were compelled to attend?

"—and attempted to compel said employees to form committees."

That, I think, is very important, because, after all, if we are to be able to meet a charge or amended charge like this, we are entitled to the very things which the rules said we
65 re to get. There is nothing secret about this. If they did anything wrong, we want to know who did it. We want to be able to talk to that man, want to be able to get an affidavit from him, want to be able to find out whether he was a man in authority who did anything like that.

All these things are important. What is the good of handing a respondent stuff like this, and saying, "Here is a charge, motion for bill of particulars is made. The answer is, you are not entitled to it."

I think that is important enough and I urged this down in Washington last Friday when I was before the National Board in the case I tried here in August, where the same
66 thing was done. I am waiting for a ruling on that. I think that this is of such importance in the trial of an issue of this sort that it is unfair, that it is improper and that it is jurisdictional if they do not give it to you, if they refuse to give it to you, they should prevent it [12] from going on in the hearing.

Here is a concern that has 185—140 employees. How is

it possible for me to prepare this case if I do not know which employees were coerced? If they would give me two men or 67
forty or one hundred I would go to these people and find out what this is all about.

When they say, "You coerced your employees," you do not know whether it is two or three or fifty or seventy-five. You cannot do anything.

Therefore, I urge this at the outset, and I ask that they be directed to furnish a bill of particulars of this amended charge in the manner in which I requested it in these various subdivisions, 1 to 7, of the motion for a bill.

I asked them in these various paragraphs to give me the name of any person or persons in the National Licorice Com- 68
pany. First let me find out who in the National Licorice Company is claimed to have done these things. You have eight or nine officers, subordinates, foremen, assistant foremen. When they said, "The said National Licorice Company," I do not think they know what they mean. Certainly, I do not know what they mean, and it gives nobody any clue to anything.

That applies to the other six subdivisions that follow.

Then again, with the employees, the same criticism of [13] that—no employees are mentioned, nobody is mentioned. It seems to me that if this subdivision is to be given any meaning at all, and if it means anything, and I call your at- 69
tention to what the Chief Justice of the United States Supreme Court said in the Jones & Laughlin Case—there is a distinct sense there in which he says the rules of the Board must be followed.

If this rule is here for some reason, it should be followed. If it is not, it should be taken out of the rules. While it

is here, it should be followed, and I should be given the names of the individuals involved and the time and place of occurrence.

I would like to have a ruling on that, because I consider that very, very important in a trial of any matter coming before a Regional Board.

Trial Examiner Korey: What have you to say, Mr. Graham?

Mr. Graham: I would say in essence what was said in the supplementary answer, that the respondent is here responding not to the charge, but to the complaint, that the issues which are to be tried in this hearing are the issues raised in the complaint and that, therefore, particularization of the complaint may justly and fairly be demanded, whereas particularization of the charge may not be demanded.

The purpose of the charge, as stated in the supplement-
[14] ary answer, is to bring the matter before the Board, in order that an investigation may be held and this, in itself, I think, constitutes a reasonable argument for the charges filed with us before any investigation has been made.

I, therefore, do not feel it should be necessary for the Board to file a bill of particulars in response to a request for such a bill, insofar as that request relates to the charge.

(There was discussion off the record.)

Mr. Mann: As to the complaint, I make a similar motion and—of course, Mr. Graham has handed me this paper just now, and I want to see what it is, to what extent he has complied.

Trial Examiner Korey: Take a few minutes, yes.

Mr. Mann: Paragraph 8 of the demand for the bill of particulars reads as follows:

"State the names of the employees whom the National Labor Relations Board claims constituted a majority of the employees who designated the Bakery & Confectionery Workers International Union of America, Local Union 405, as their representative for collective bargaining, as alleged in paragraph 4 of the complaint." 73

The supplementary answer to the demand for bill of particulars, that matter which Mr. Graham just served on me—that matter is set forth as follows:

[15] "In answer to paragraph 8 of the respondent's notice, no particulars can be supplied. The actual names of the majority of the employees designated the Bakery & Confectionery Workers of America, Local Union 405, as their representative in collective bargaining, are not relevant to the issue before the Board. The only necessity in this respect is that it has been established that there was a majority of said employees. Furthermore, such actual names constitute proof which will be required during the course of the hearing only under an appropriate ruling by the Trial Examiner that such actual names are a necessary part of the allegations of the complaint." 74 75

That is the way the Board purports to concur with the demand. I cannot, of course, subscribe to the statement that the actual names of the majority of the employees are not relevant to the issue before the Board.

If that is not a relevant issue here, I do not know what is.

Mr. Graham: Perhaps I could qualify that somewhat.

76 Mr. Mann: Just a minute. And if that is not relevant, why do they allege it in their complaint? It is something which they have to prove. Anything that is alleged in the complaint must be proved. They distinctly allege it and when I ask them for a bill of particulars as to who are, or give me the names that you claim of the workers who you says [16] constituted a majority of the employees, they say it is not relevant.

I cannot reconcile that at all.

Mr. Graham: I would say as to that, the names are not alleged in the complaint. The only allegation in the complaint 77 is that there was a majority. The names, themselves, constitute proof of the allegation of the complaint as to majority.

Mr. Mann: Well, I take it, Mr. Graham, that you mean by that that you will prove by somebody that the union represented a majority of the employees?

Mr. Graham: That is correct.

Mr. Mann: But, you see, Mr. Examiner, I think that I am entitled to get that information in advance of the hearing. The very purpose of a bill of particulars is to limit proof, expedite a hearing.

I should not be compelled here to be confronted for the first time. These are my workers. We pay them. We are 6 78 being charged here with violation. Why should not we know in advance whom they claim they represented? We would like to speak to the workers whom they claim they represented and find out whether they coerced workers into signing cards. We have an allegation like that in our answer.

We claim they did a lot of coercion here, that they called a sit-down strike. You will see it raised in the [17] defense, that they forced the workers to go out, which compelled my

client to shut up his plant for five weeks because he did not have anybody to work there and could not put up the fires.

This is a concern that has to use furnaces, not a man who could do anything. That was their act. Why should I not know it in advance? They say it is not relevant. If not, why put it in the complaint?

I say that as to that demand No. 8 in my bill of particulars, based on the allegations of this complaint, which is in paragraph 4—I claim I am entitled to that. I ask for a ruling on that.

Mr. Graham: I would like to say again that the statement as to relevancy is limited to the actual names. The actual names are said to be irrelevant and the actual names are not put in the complaint.

Secondly, I would say, as indicated before, the actual names will constitute a factor of proof and, thirdly, I would say it is against the policy of the Board to compel a labor union to disclose its actual membership, unless that be necessary to the establishment of a matter which must be proven at a hearing.

Mr. Mann: Of course, I have been on some of these hearings before, and I know the way this is done, or the way it has been done on other hearings. I have urged very [18] strenuous objections to that method of proof.

What they do, and I suppose what they propose to do here, is to offer cards in evidence.

Ordinarily, they do not even permit us to see those cards. That is one of the reasons why I am making this motion for a bill of particulars as to that. I want to know in advance. It is an allegation in the complaint, and, after all, this is being handled in a legal manner. It may be a policy of the Board, maybe the policy of the Trial Examiner, but I think,

after all, in the final analysis, these things reduce themselves
82 to questions of law.

If we are not entitled to a bill of particulars as to an allegation in the complaint where they claim a majority of the employees had constituted their organization as to collective bargaining agent, when we deny that in our answer we are entitled to proof in advance by a bill of particulars of the people whom they claim constituted a majority.

I think in that respect we should receive that information now and not wait until the proof is adduced at the hearing.

Trial Examiner Korey: Are there any other paragraphs?

Mr. Mann: Yes, that is as to paragraph 4 of demand 8 of
83 the complaint. They have complied with paragraph 8, with the demand designated paragraph 9 in my bill of particulars. [19] They do give me that information.

I will take paragraph 10 as a compliance.

Paragraph 11 is a part compliance. I do not know what you are going to rule on that, especially the last half. Who on behalf of the respondent has urged, persuaded and warned its employees to refrain from becoming or remaining members of the union?

They say as to that that the officers and agents mentioned in the preceding paragraph are the same officers. I will take that, but the "employees who have been thus urged, per-
84 suaded, warned, or threatened, coerced or intimidated, as alleged in paragraph 7 of such complaint," are all of the employees.

That may be an easy way of getting out of it, but I think they ought to specify names. You see why, Mr. Examiner, because this is—if they specify names, I will call those people to prove that that is not true, but when they say all, as a

generality, that has no effect here. If they say John Smith or Jacob Rosenberg or Patrick Jones or Michael Sweeney— 85
I would bring down Michael Sweeney and Patrick Jones and James Rosenberg. When they do it that way, it does not mean anything. They do not mean that we coerced one hundred—maybe they do, I do not know. If they do, let them put in 140 names.

Mr. Graham: As to that, Mr. Examiner, I would say when [20] ten employees out of fifty are urged, persuaded, warned, threatened, coerced, and intimidated, the effect will spread to the fifty.

Mr. Mann: That is not your allegation, and I do not subscribe to that conclusion at all. We might coerce three and 86
we might not coerce 137. You would not say we would have to cancel a contract with 137 when you do not claim we coerced 137.

You might urge—

(There was discussion off the record.)

Trial Examiner Korey: Anything else?

Mr. Mann: No, I think not.

Trial Examiner Korey: As we have it now, Mr. Mann, you are asking for direction of a bill of particulars as to the information elicited by you regarding the amended charge 87
with reference to the amended charge?

Mr. Mann: That is right.

Trial Examiner Korey: Secondly, with respect to paragraph 8 of your demand regarding the paragraph 4 in the complaint—

Mr. Mann: Right.

Trial Examiner Korey: —and the latter part of paragraph 11.

Mr. Mann: That is correct, those three things.

88 Trial Examiner Korey: Is there anything else to be said [21] by any of the others?

Mr. Sklar: May I make a statement, Mr. Examiner, on behalf of the union?

In addition to what Mr. Graham already has said, in opposing any bill of particulars as to the amended charge, I might say this—that from my reading of the Act and Rules and Regulations, I believe that the charge is for the purpose of putting into operation the wheels of motion of the National Labor Relations Board, not the respondent.

When we, as a union, file a charge with the Board, we
1 89 particularize our charge with a statement, which was filed in this case with the Board. That acts, in my opinion, in the nature of a summons based upon that particular charge, the Board, itself, makes an investigation and issues complaint.

The complaint and the answer which then define the issue is what should be made the basis of the bill of particulars.

With respect to the names, we feel this way, that we do not mind giving to the respondent the percentage that we claim to have represented of the workers at the time this thing is disputed, but we do say giving these people the names of the workers we represent would, in the nature,
6 90 give them an opportunity to examine our witnesses in advance of trial, people whom we may have to call to prove our case, [22] who are under the direction and control of the respondent.

Trial Examiner Korey: What do you mean?

Mr. Sklar: I mean there was a strike called on August 2nd. After three or four weeks the people started to drift back to work. These people are now working for the re-

spondent. If I tell anybody for the respondent the name and address of one particular person and he has an opportunity to investigate or talk to him, he may be pulling our case from the very outset before we have a chance to call that person to the stand. 91

If he wants to know how many we represented, we will tell him and prove it by calling these people to the witness stand.

Trial Examiner Korey: With respect to the first motion, regarding the bill of particulars, as to the allegation in the charge, I will reserve decision.

With respect to paragraph 8 of the demand, as well as the latter part of paragraph 11, I will deny the motion. 92

Mr. Mann: Will you give me an exception to your denial?

Trial Examiner Korey: Yes.

Mr. Mann: I have another motion to make, Mr. Examiner, which is directed to the pleadings. You will notice that there is no charge annexed to the complaint. There is what is designated an amended charge. I claim and I urge now [23] that that is a jurisdictional defect, an amended charge—the word "amended" presupposes an original charge.

The entire proceedings under this Act is based on a charge, not on an amended charge, but on a charge. If you have a charge attached to a complaint, you may later amend it. There is no doubt about that, but you must start off with a charge and you must attach that charge to the complaint. This is all technical, of course, but the Act and the Rules provide for technical procedure. 93

I call your particular attention to Article II, Subdivision 5 of the rules, which says, "After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall issue and cause to be

served upon the respondent and the person or labor organiza-
94 tion making the charge, a formal complaint in the name of the Board, stating the charges and containing a notice of hearing before a Trial Examiner at a place therein fixed and at a time not less than five days after the service of the complaint."

Then this significant sentence—"A copy of the charge shall be attached to the complaint."

Where have we got that here? We have no copy of the charge attached to the complaint. We have an amended charge. It is not the amended charge which brings on the issuance of the complaint or which gives the Regional Direc-
95 tor jurisdiction [24] to issue the complaint. It is the charge, the original charge, and I say now that failure to attach the original charge to the complaint is a defect which goes to the very jurisdiction of the proceeding, and I say now and I urge now, for dismissal of this complaint on the ground that a copy of the charge was not attached to the complaint served on us, and it appears here by the certified copy of the record which has been offered in evidence as Board's Exhibit No. 1, that that does not contain a copy of the original charge.

Why the original charge is not attached to our complaint served on us, or why it is not filed here with you, that is something I know nothing about.

96 However, clearly there has been a violation of this Section 5 of Article II of the Rules in that there is a failure to annex a copy of the original charge to this complaint, and I again urge the ruling of the Chief Justice that these are rules which must be complied with.

I ask that the matter be dismissed for this reason.

Mr. Graham: As to that motion, I would oppose the motion on this ground: When a charge is amended, the result is a

charge, although it is true that this resulting charge is not the original charge, it is the present charge. 97

The resultant product of the interaction of the original charge in the amendment—Article II, Section 5 says, "A copy of the charge shall be attached to the complaint."

[25] That is done here. The word "amended" is written on the charge to indicate its genesis and indicate the fact it is not the original charge, but Article II, Section 5, does not state the copy of the original charge shall be attached to the complaint.

It says merely a copy of the charge shall be so attached and clearly, even though the charge has been amended, as it remains today it is the charge. 98

Trial Examiner Korey: I will reserve decision on that, Mr. Mann.

Mr. Mann: All right.

Trial Examiner Korey: Are you ready to proceed? Are there any other motions?

(There was discussion off the record.)

Mr. Graham: I should like to call Mr. Sanford as my first witness.

DANIEL D. SANFORD, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: 99

Direct Examination:

Q. (By Trial Examiner Korey) Will you please give the reporter your full name and address? A. Daniel D. Sanford, 45 Nassau Boulevard, Garden City, Long Island.

[26] Q. (By Mr. Graham) Are you an officer of the National Licorice Company, Mr. Sanford? A. I am; president.

100

Q. President of the company? A. Yes.

Q. How long have you held that office? A. I think this is the ninth year.

Q. How long had you been with the company prior to holding that office? A. Since November 17th, 1902.

Q. The hearing here is concerned with the Brooklyn plant of the National Licorice Company. Would you give the Examiner a brief description of the operations as carried on in this plant, as to the receiving, manufacturing, packaging and shipping of the final products? A. Candy manufacturing—we purchase raw materials, combine those raw materials by cooking and moulding processes, into different numbers, items.

101

Trial Examiner Korey: Such raw materials as you have classified in the stipulation?

The Witness: Yes, that is right; and through drying processes, some of them, there are other details involved in the manufacture.

Q. (By Trial Examiner Korey) Can you give us an idea as to departments? [27] A. Well, there is the cooking room, shipping room—the cooking room means what the name would imply. On the second floor is stock, mostly stocks of raw materials and finished products.

102

The third, fourth and fifth are used for manufacturing processes in which the goods are formed into their respective shapes, and so forth.

Q. (By Mr. Graham) Then, after the products have been manufactured, they are packed for shipment, are they not?

A. Packed in different parts of the building. Some are packed where their finishing process takes place. Most of them are in fact, on the floor where the finishing process takes place. 103

That is in boxes and the boxes are packed in cases on the second floor.

Q. And then the products are shipped out from the plant, are they? A. Yes.

Q. Will you state the approximate cost of the raw materials you use in the manufacture? A. In what way do you mean?

Q. Approximately how much in dollars. A. A year?

Q. Yes, per year. A. I understood that was not necessary, and I did not bring [28] it with me. In fact, I did not refer to it. 104

Trial Examiner Korey: We would like to get an idea of the size of the company, that is the main reason we ask for it.

Mr. Mann: I would have had a man here who could give you better information on that, except I thought Mr. Hickey's request in his questionnaire covered all that. I told him that, said I would rather bring you the man and let him testify.

No, he would not have that. 105

(There was discussion off the record.)

Q. (By Mr. Graham) What other plants aside from the Brooklyn plant are owned and operated by the National Licorice Company? A. We have a plant in Philadelphia, Moline, Illinois, and Montreal, Canada.

Q. Taking all four of the plants, approximately what rank

would you give to the National Licorice Company in terms
06 of the size or in terms of the amount of import and value of finished products in relation to other companies in the same industry? A. I have no knowledge of the business they do in volume. I have never been in their plants.

Q. (By Trial Examiner Korey) Would you say all plants combined with your Brooklyn plant—that is one of the [29] largest or the largest of its kind, manufacturing this type of product? A. I do not consider it relative because we manufacture a number of items that sell, which they do not manufacture. They make similar items to ours. We make many numbers of different kinds of goods which they do not
07 manufacture.

Q. (By Mr. Graham) Would you say the company was one of the largest of the companies with which it is competing? A. What are you talking about, the candy business as a whole, licorice business? We are in the drug business.

Trial Examiner Korey: The licorice business.

The Witness: Take McAndrews & Ford at Camden, New Jersey. They are very much like a concern we are, but they are extractors.

Q. (By Mr. Graham) That is as to the licorice business,
08 is that what you mean? A. Yes.

Q. As to the candy business, could you make such a statement, that is, one of the largest? A. No, I would not attempt to state it, it is not. We are comparatively small compared to some.

(There was discussion off the record.)

Q. (By Mr. Graham) Is the Brooklyn plant under one control as to the manager thereof, one manager who controls 109
the plant? [30] A. No.

Q. Are there several such managers there? A. That all depends upon what you mean by control. The board of directors indirectly control the plant.

Q. As to the actual operation of the plant, the hiring and firing of employees, and the control of the work done, designation, for example, of such matters as hours of work and the type of work to be done and the standards of skill required.

Are those matters centralized as to the Brooklyn plant? A. They usually come to final decision of myself. 110

Q. And under you? A. If they are important.

Q. Under you, could you state what other controlling officers, such as the type I have designated, may be? A. It all depends upon the class of work. We have a superintendent, under him foremen, floor women. We also have a manager of the shipping department, assistant shipping clerk.

They usually take care of the respective duties, the heads of the departments, the usual routine, supervise the work and direct it.

If anything unusual happens it comes down to the office for decision.

Q. Does the superintendent of the plant have control over 111
[31] the manager of the shipping department or are they both under your direction? A. Both under my direction.

Q. So now these supervisors are controlled either by the superintendent or by the manager of shipping? A. You mean, foremen and floor women?

Q. I presume that is what you intended by the word—you referred to "supervisors".

There are, then, no supervisors as such, simply foremen
112 and forewomen, under the superintendent or manager of the shipping of the plant? A. Yes.

Q. Do the superintendent and manager of shipping respectively have control of the employees in the matters to which I just referred, hiring and firing, the type of work done, and so forth? A. To a certain extent; I would not say complete control. There might be conditions where they would not have full control of that.

Trial Examiner Korey: Ordinarily, though?

The Witness: I would say under ordinary—

113 Q. (By Mr. Graham) In such instances as they lack full control, it would ordinarily, I presume, be a matter in which they lacked authority, or for some other reason wish to appeal to you for a final decision, so that you would [32] have ultimate control and they would have direct? A. Myself or the vice president.

Q. Both you and the vice president have a type of control over the superintendent and manager of shipping? A. Yes, naturally; we would not be president and vice president.

Q. Can you tell me how many employees there are in the Brooklyn plant? A. Are now or were?

Q. Excluding clerical help and excluding supervisory em-
114 ployees, do you know how many employees there were in the plant, let us say, on August 13, 1937, the date of the charge?

Trial Examiner Korey: August 2nd, on or about August 2nd.

Q. (By Mr. Graham) On or about August 2nd? A. August

2nd, that is the day of the sit-down strike. Do you include foremen and floor women, superintendents?

Q. Exclude supervisory employees such as foremen and floor women, if you will, please. A. I think approximately 140.

Q. Approximately 140? Would it be possible for you to submit to the Examiner at the same time at which you submit the other matter, a list of such employees?

Mr. Mann: I will get the exact number. You would want [33] it before they went on strike; as soon as they went on strike there were no employees.

Trial Examiner Korey: The payroll for the week before the strike.

(There was discussion off the record.)

A. We have one of July 28th.

Trial Examiner Korey: That is all right.

A. When I said 140, I may have included two or three foremen. That is accurate as of July 28th.

Trial Examiner Korey: Taken from your payroll of July 28th?

A. Yes.

Mr. Mann: I would like to say, your Honor, we would rather not give the names.

Trial Examiner Korey: I want it for our record.

Mr. Mann: I do not like the union to handle that.

They do not give us anything. That is what I am up
118 against all the time. I do not get anything out of them. They immediately get names from us.

Mr. Sklar: We will give you sufficient, before the trial is over.

Mr. Graham: Would you rather have that as a document for your own information? That is all.

(Witness excused.)

Mr. Graham: I will call Mr. Galvin. Will you take [34] the stand, please?

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119 WILLIAM A. GALVIN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Trial Examiner Korey) Will you please give your full name and address to the reporter? A. William A. Galvin, 4791 Broadway, New York City.

Q. (By Mr. Graham) By whom are you employed, Mr. Galvin? A. I am the president of the Bakery & Confectionery Workers of America, Local Union No. 405, address 245 West 14th Street, New York City.

120 Q. Approximately what is your jurisdiction—before I go into that, how long have you been employed in your present capacity? A. Well, we were formerly the Inside Bakery Workers Federal Labor Union No. 19585, a Federal Labor Local of the American Federation of Labor.

As of May, 1937, we transferred our affiliation to the Bakery & Confectionery Workers International Union of America, also with the American Federation of Labor.

I was employed as president of the predecessor to this local, in other words, the Inside Bakery Workers, from May 15, 1934, until the present date.

[35] Q. Have your activities extended beyond the jurisdiction of the present local here in question? A. I do not understand your question.

Q. Have your union activities been limited to the local which has jurisdiction over the Brooklyn plant, or have you had also some contact with the national organization?

Mr. Mann: I object to it as immaterial. What has that got to do with it?

Mr. Graham: That is simply a basis for the next question, which is—what is the approximate size of the National union and the scope and purposes.

Mr. Mann: All right.

The Witness: As far as I am concerned, I have been sent on previous assignments to cities such as Buffalo and Richmond, by the International Union, itself, if that answers the question.

Q. (By Mr. Graham) Yes. Approximately what is the size of the national union? A. I cannot be bound to that. It is growing so rapidly at present.

The Trial Examiner: The last you hear.

The Witness: About 700,000, something like that; I am not sure. I may be a couple of hundred thousand out of the way, one way or another. I am not competent to give that information. All I can say is the size of my own union.

[36] Q. (By Mr. Graham) What is the size of your own union? A. About 3500 to 4000 members.

Q. Does your union have a constitution and by-laws? A.
124 We have the constitution of the Bakery & Confectioners Workers International Union as our constitution and by-laws for local autonomy and local activities, etc., not in any way conflicting with the constitution of the International Union.

Q. Are you familiar with the constitution and by-laws? A. Both, yes.

Q. What, according to such constitution and by-laws, is the purpose of the union? A. Well, the purpose of the union is to improve the wages, hours, and working conditions of all workers in the craft.

125 Mr. Mann: Just a moment; I object to the witness stating the purpose. He says they have by-laws and the parent body has a constitution. That is the best evidence of their purposes and authority.

Trial Examiner Korey: Well, usually it is, but in order to get the information that is necessary to this proceeding and to avoid clogging up the record, we usually take this, just as a matter to see whether or not this is a proper labor organization within the meaning of the Act, that is all.

Mr. Mann: I do not dispute that, I think they are a [37] labor organization within the meaning of the
126 Act, but as far as their purposes are concerned, and as far as—

Trial Examiner Korey: If he knows of his own knowledge, we will take it.

Mr. Mann: I except.

Trial Examiner Korey: You may have an exception.

(There was discussion off the record.)

Trial Examiner Korey: Have you completed your statement? 127

The Witness: I do not think I have. I was saying that we are formed and we carry on as our duties as officers of the union—

Trial Examiner Korey: You mentioned wages, hours and conditions.

The Witness: Wages, hours and conditions of workers in the industry—I might mention also as far as jurisdiction is concerned, until recently my organization—if you want me to carry that into the confectionery field—until just recently we were just biscuit and cracker jurisdiction and the International Union 128 wanted to organize in Greater New York and vicinity in the confectionery field and gave that jurisdiction to me personally and my officers as representatives of the International Union directly.

Q. (By Mr. Graham) When were you first connected with the controversy which arose between the union and the National [38] Licorice Company? A. Our local, under its jurisdiction and under the request by the International, opened a headquarters, at 194 Park Avenue, Brooklyn.

From there we endeavored to organize workers in the bakery and candy field, and organized such workers as the 129 Rockwood Company employees, and while in the process of organizing those workers, some workers from the National Licorice Company came and asked to be organized.

Trial Txaminer Korey: Give us the approximate time on that.

The Witness: Approximately the first part, or the middle of July, some time in July.

There are officers, other officers, better qualified to
130 give exact dates, if necessary.

Q. (By Mr. Graham) Do you recall the date on which you, having obtained what in your opinion was a majority of the employees in the Licorice Company, when you first asked for a conference with a representative of the company? A. On or about July 14th or 15th, our organization sent a telegram via Postal Telegraph Company, if I remember properly, to the National Licorice Company, in which we said in effect that the Bakery & Confectionery Workers Local 405 represented the employees of the National Licorice
131 Company at such and such address, for the purposes of collective [39] bargaining—rather, as the collective bargaining agency for the purposes of bargaining on wages, hours and working conditions.

In that telegram we also requested a conference with the company. Said request was never granted, nor did we hear anything from the company officially until myself and another officer of my union presented ourselves at the offices of the company, in John Street, Brooklyn.

Mr. Mann: What date was that?

The Witness: Approximately July 19th or 20th. I figure it is the 19th, on or about July 19th.

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Q. (By Mr. Graham) What occurred—rather, first, who was present at that conference in the plant? A. As I remember it, with me was one of the trustees of my organization, Bicariello, and for the company were present Mr. Sanford, the president, I think Mr. Carpentier, the vice president, Mr. Healey, who is an officer of the firm in some way, and, I think, a Mr. Smiley, who seems to be the treasurer, came in during the conference.

Q. Will you state in your own words what occurred at that conference? A. Having had a previous meeting of 133
the employees of the National Licorice Company at which they discussed the demands they wished to be presented to the company, we presented a typewritten copy of those demands to the company at that [40] time.

Do you want to have me continue?

Q. If you will continue throughout the conference. A. As I remember it, Mr. Sanford claimed lack of knowledge as to who we were, what we stood for, and though having admitted receipt of the telegram, he did not admit we were in any way representing their employees.

I offered to give Mr. Sanford the full record of the appli- 134
cations signed by his employees to that date as proof of our being the collective bargaining representative for his employees.

After some deliberation, Mr. Sanford said he would accept it, but he would take the applications—but he would not receive them as proof that we represented the people whose names were on those applications and who signed them, themselves.

Of course, since he refused to accept them as proof of our being collective bargaining agency, there was no sense in giving him a full list of our membership, from our point of view, to use it for his own benefit in any way, shape or 135
form.

At that time he said he would not have any way of even proving their signatures because he had not, to my surprise, ever received any signatures from his employees when they received their money.

[41] Since that time, I understand he has inaugurated a signing-for-your-money policy in the company.

Mr. Mann: I move to strike that out.

Trial Examiner Korey: Strike that latter part out, unless you know of your own knowledge. Do you know that of your own knowledge?

The Witness: I can prove it.

Trial Examiner Korey: Strike it.

Q. (By Mr. Graham) Was there any reference made to a check of the cards against the payroll during that conference? A. Yes, we have not cards, Mr. Graham, but we have full-blown applications, full title, name, address, age, where born, and white, male or female, and signatures on them, and we offered to give those applications as proof, and to compare them, of course, with the signatures and with the payroll.

That is the time Mr. Sanford brought out that they do not sign for their money or did not sign for their money in the National Licorice Company, to that day, and had no way of comparing signatures.

There were further conferences after that that I was present at, if you wish.

Q. I wish to pursue that subject. Where was the next conference in which you and Mr. Sanford participated, held?

[42] Trial Examiner Korey: Or anybody else, not limiting it to Mr. Sanford.

Mr. Graham: I do not mean to limit him to that, although I do not think it would do any harm in the scope of the question in this case.

The Witness: After our conference with Mr. Sanford, in fact, even previous to our conference with Mr. Sanford, we had prepared, I mean on that date, July 19th, we had prepared a statement—our attor-

ney had prepared a statement of facts relative to our being collective bargaining agency, etc. 139

Upon receiving the reception we did from Mr. Sanford and those with him, we decided that complaint or whatever it is, I do not know on the form of the Board what it would be called, would be filed with the Labor Board.

Q. You refer to the charge the union filed? A. I think the original charge.

Mr. Sklar: Petition for election, I believe, was filed on that day, dated July 19th. 140

The Witness: Pursuant to that, a Mr. McCann, one of the attorneys for the Board, called upon us to come down and meet with representatives of the company, which we did, approximately on or about July 28th, and in the office of the Board, Mr. Sklar and myself met with Mr. Sanford and Mr. Healey in Mr. McCann's room.

[43] At that time, as I remember, Mr. Sanford agreed that he would no longer make any efforts to personally approach his employees as he had heretofore been doing.

Mr. Mann: I move to strike that out; there is no evidence. 141

Mr. Sklar: He is stating a conversation, Mr. Examiner.

Trial Examiner Korey: We want a little order here, so we can conduct this properly. Do we understand you to say this is a conversation between Mr. Sanford and you people at the conference?

The Witness: I am paraphrasing the exact con-

versation given at this conference between Mr. Sanford, Mr. Healey, Mr. Sklar and myself, and Mr. McCann being present.

Mr. Mann: He was not doing that in his answer. His answer did not indicate that at all.

Trial Examiner Korey: We have it cleared up now.

The Witness: Again getting back to the fact that Mr. Sanford did say he would no longer approach his employees individually or approach them, himself, but in the future he would have his employees approach him, after some minutes of conversation there; Mr. McCann being present all through, Mr. Sanford and Mr. Healey said that if we, the union, came to see them the following day at 2:00 in the afternoon, they would bargain collectively with our union.

That, I think, was the 28th of July, and the following [44] day was the 29th of July, at which time—

Q. (By Mr. Graham) Before you continue with the next conference, do you recall whether or not the issue of the strength of the union and the question of whether or not the union had a majority was raised at that conference at the offices of the National Labor Relations Board on the 28th of July? A. As I remember it, it was, and we again offered to present our applications as proof.

As I remember, some of the previous procedure, I think we even showed those applications to Mr. McCann of the Board to prove. I think, as I remember it also, at that time Mr. Sanford did make remarks to the effect he had approximately 140 or 150 or 135 employees, and since Mr. McCann had seen more than 51 per cent of that number, it was agreed there we did represent the employees.

Q. It was agreed at that conference that there should be a conference on the following day? A. Yes, the following 145
day to be held at the offices of the Company.

Q. Did you attend that conference the following day? A. Approximately 2:00 o'clock the following afternoon, I think it was in the afternoon, Mr. Sklar, Mr. Anderson, my vice president, Mr. Bicariello, and myself, went to the offices of the company where we met with Mr. Sanford and Mr. [45] Healey, a stenographer—and I am trying to think who else was present. I think Mr. Smiley was there. I think that is all who were there for the company, maybe one or two others that I cannot remember.

Q. For the union, who was there? A. I said, myself, Mr. 146
Sklar, Mr. Bicariello, and Mr. Anderson.

At that conference Mr. Sanford decided as his procedure he would read a typewritten statement that he prepared or had prepared which seemed to, in the manner of a lawyer, follow our contract, Section 1, give an answer to Section 1, Section 2, give an answer to Section 2, etc., the language of which I recognized to be that of—very much like the language of some other employers, and I said so.

Mr. Mann: I object to that.

A. (Continued) I said so at the conference, that I noticed—

Mr. Mann: I object to that. 147

Trial Examiner Korey: Did you tell him?

The Witness: Definitely told Mr. Sanford.

Trial Examiner Korey: What you are telling us?

The Witness: I am just paraphrasing conversation.

Trial Examiner Korey: Very well.

The Witness: I definitely told Mr. Sanford that

I recognized the language to be that of language used
48 by other [46] Brooklyn employers and also definitely said to Mr. Sanford that I thought it was a shame that men of his standing and ability should be used as poll parrots in just saying the same words over and over again in every instance.

Requesting some definitions as to what he was reading, Mr. Sanford never defined his meaning, but said, "I will read it again."

In the end, Mr. Sanford did offer to give his employees something which his employees had already refused in personal contacts with him, that is, 5 per cent in-
49 crease in pay, a week's vacation, and that was all.

Mr. Sanford definitely said that he would not recognize the union as the collective bargaining agency for the employees, but would talk with us now and ask us to bring the results of the conference to his employees and thereafter it would be required of his employees that they individually sign contracts with him, and that he deal directly with his employees and not with the union.

Upon that statement of his position in the matter, we left the conference with no further dates having been arranged for further conferences, as I remember.

50 Q. (By Mr. Graham) At this conference held on the 29th of July, you have indicated that Mr. Sanford read remarks from a paper and that the remarks which he read were broken down more or less along the lines of the contract which you [47] had presented to him on a previous occasion? A. It seemed to me he was following a—our demands—it seems to me he was following our demands, taking paragraph

1 and saying, "We refuse to do this," for lengthy reasons, paragraph 2, "We do this for," for lengthy reasons, "Paragraph 3 is ridiculous;" "Paragraph 4, we won't even mention that,"—something of that sort, speaking directly on only one or two points.

Q. The reason for my question was, I would like to develop how many of the requests made by the union were acceded to by the employer. A. It would be very difficult for me to say at this present moment. I have been in about twenty-five conferences with twenty-five different employers. Unless I would be permitted to read any list of demands as presented to the company, I might refresh my recollection—

Q. I have here a copy of an agreement which apparently is frequently used by your union, and the agreement in question here. A. As far as the language is concerned, it is frequently used by our union. The terms may be different in a different situation.

Q. I hand this to you and ask you whether or not you recognize it.

(There was discussion off the record.)

[48] A. This is the contract which in substance we—the proposed agreement which, in substance, we presented to the company, as I see dated here the 19th day of July, 1937. I see here notations as to his answers.

Where we ask for sole collective bargaining agency, although we had the day before been in agreement, we represented more than 51 per cent, and which, if I may say so, under the law I understand if we represent more than 51 per cent, we should be in effect the sole collective bargaining agency—Mr. Sanford in his reading off of his answer to

Section 1 which says the union is the sole collective bar-
154 gaining agency for all the employees of the company who are not in an office or supervisory capacity—Mr. Sanford said in effect he would accept this as for members only.

Q. That he would not accept the union as exclusive bargaining agency? A. No, members only. No. 2, he would refuse the union shop, because it was un-American in principle. Regarding the wages, they were preposterous, and the union, ourselves, have no knowledge of the trade or we would not be asking for wages.

Of course, the union puts in demands in an effort to bar-
155 gain collectively with the employer as to a basis that is agreeable to both.

And so on, he went down through the thing. I do not [49] know—

Q. You do not recall definitely whether he refused to accede to any of the union demands, and if so, to what demands he did accede? A. Refused to permit us to be sole collective bargaining agency, refused the union shop, refused all of our wages, in reading off his paper, as preposterous.

We asked for a five-day week and an eight-hour day with time and a half for overtime. He said it could not be paid.

The same way for double time for Sundays and legal holidays, cannot be paid.

156 All employees scheduled for work shall be guaranteed at least eight hours' work on the day scheduled. He said it could not be done.

The request for two weeks' vacation—he said it was possible something might be done, but two weeks was impossible.

In asking that in slack periods, all the present employees of the company should divide the available employment

equally among them, he said that was the share-the-work method of operation which failed under the administration after the request of Herbert Hoover, and which he would not inaugurate in his plant; that, of course, any new employees should not make application for membership in the union [50] after a trial period—that was no good as far as he was concerned because he was refusing the union shop, anyway. He found that an official representative of the union to be permitted to visit a plant at any time after notice to the foreman and manager was out of the question. 157

Whether or not the company would use the union label was immaterial. That the company should not discharge any employee without previous notice and discussion with an official representative of the union, was considered one of the inalienable rights of discharge of employers. 158

That is right here, a quotation.

(There was discussion off the record.)

A. (Continued) The notes, it just so happened it looks like my own handwriting, I thought they were made by somebody else, but I see it was not. It is my own writing.

Q. (By Mr. Graham) You made notes, those notes, yourself, did you? A. Yes.

Q. When did you make the notes? A. During this conference when he was reading 1, 2, 3, and 4. I was taking what I thought the substance of what it meant to us. 159

Q. You, yourself, made these notes on that paper at the time? A. It looks like my terrible writing, yes, sir; this is my [51] writing.

Q. At the time the answer was being given? A. Yes.

Q. Will you continue as to any other demands which may have been acceded to or denied?

Trial Examiner Korey: When were these demands
160 presented?

The Witness: On the 19th of July, sir, and this was discussion.

Mr. Mann: You mean the 29th, do you not?

The Witness: Presented on the 19th. On the 29th is the discussion we are talking about.

Finally, he said there would be no written contract with any union, but would so sign one with their employees individually.

We were in effect to sell whatever we would come to an agreement with him about, as far as wages and
161 hours—

Mr. Mann: I object to that. That is not what he said. That is construction of what he said.

Trial Examiner Korey: Give us the conversation.

Mr. Mann: He did not say we were to sell, did he?

The Witness: He said, "We will come to an agreement here and you get the employees together, have them agree upon it. Then we will have no written contract with any union, but we will sign individual contracts with all our employees and hereafter directly deal with our employees."

162 [52] Q. (By Mr. Graham) Does that complete it? A. That is a resume of everything said there, yes, sir, so far as I remember. There may be something somebody else present there might have said or read that I have forgotten.

Q. One or two more questions. You stated there was a stenographer present at this conference? A. Well, yes. I may go back to say that Mr. Healey, in the conference of July 19th, also began to make stenographic notes, and it

is the policy of my union when in conferences where a stenographer is used, that such stenographer's notes or 163.
transcription, copy of transcription of said notes, must be filed with our union so that at that conference on July 29th, we said that a stenographer would be permitted there, and should she make a transcription of the notes, we would get a copy of the transcription.

Mr. Mann: I move to strike out the policy of their union and what he said would be permitted. After all, it was in their plant, and I object.

Trial Examiner Korey: Did you tell him that?

The Witness: It was agreed we were to get a 164
copy of said transcription.

Trial Examiner Korey: You did not say anything about the policy of the union?

The Witness: I told them that right there, that is the [53] policy of the union. I told them—I said on the 19th day of July and repeated it again on the 29th day of July, if the company is to use a stenographer and take stenographic notes of things said there, I wanted a copy of such transcription of such notes.

Now, this stenographer, I may say, thereafter failed to transcribe the notes. We failed to get a copy of said proceedings there, and, therefore, I can only say 165
I was told by my vice president in a telephone conversation that the stenographer went on her vacation the night after we had the meeting and, therefore, we could not get the transcription.

The strike intervened and we have had no copy of the transcription since.

Q. (By Mr. Graham) The name of the vice president is Mr. Anderson? A. My vice president, James Anderson.

Q. I am not sure, it may have been that I simply did not hear you—did you say at the beginning of the conference you were told you could have a transcription, copy of the notes? A. Yes.

Q. After the conference was over and from that time until the present time you have been unable to get such a copy of the notes? [54] A. We requested a copy of it on Monday, August 2nd, and I told you the answer, the stenographer—the notes were jumbled up, something of that sort, and she could not transcribe them, but, anyway, she went on her vacation at that time.

Mr. Anderson is better qualified to—

Q. I want you to verify that. I will put him on for that purpose.

Now, you made a brief reference to the familiarity which you had with the statement which was being read by Mr. Sanford. I would like to ask you whether you identified that statement as being similar to any other type of statement which you have seen or heard recently.

Mr. Mann: I object to that as being immaterial.

(The question was read by the reporter.)

Mr. Graham: I am quite willing to reframe the question and perhaps satisfy counsel.

Trial Examiner Korey: Withdraw that question.

Mr. Graham: I withdraw that question. You stated in your testimony just now that you had raised the issue of your own familiarity with the statements which Mr. Sanford made.

I would like to ask you what Mr. Sanford said to you on the issue of that familiarity which you said you had? 169

A. I said something further than just that I was familiar [55] with it. I also—

Mr. Mann: You were not asked that. You were asked what Mr. Sanford said to you; that is all.

A. Mr. Sanford admitted that the—

Mr. Mann: I object; what did he say? 170

Trial Examiner Korey: What did Mr. Sanford say?

(There was discussion off the record.)

A. I said to Mr. Sanford that I recognized the phraseology of the things he was reading from this paper, that we were very familiar—it was very familiar to me, and in effect, it was a shame that men of his character and standing and ability should be used as poll parrots for the Brooklyn Chamber of Commerce.

Mr. Sanford said, "I admit the Brooklyn Chamber of Commerce is advising us in these proceedings."

Q. (By Mr. Graham) This occurred on the 29th of July, according to your testimony, did it not, Mr. Galvin? A. That is true. 171

Q. Were you then called away from this controversy or did you continue to act in connection with this particular labor problem? A. On that day or the day following I received a wire from my international office, requesting that

I go to Richmond, Virginia, on a matter for the International Union, where I stayed for ten days and, therefore, had no meeting [56] with the company or myself personally thereafter until this present time.

Mr. Graham: That is all; your witness, Mr. Mann.

Cross Examination:

Q. (By Mr. Mann) Mr. Galvin, are you an attorney? A. No, sir.

Q. Did you ever study law? A. Yes, sir.

Q. Did you graduate? A. I am presently studying law, in the third year, evening session of the Fordham Law School, downtown branch.

Q. Did you say you live at 4791 Broadway, New York? A. True.

Q. Do you not live at the Hotel Holland on Ninth Avenue and 42nd Street? A. No.

Q. Did you ever live there? A. No, sir.

Q. Are you married? A. Yes, sir.

Q. Occupying an apartment in 4791 Broadway? A. Apartment 3-A.

Q. You live there with your wife and family? A. Wife and her mother.

Q. You say you have been president of the Bakery & Confectionery [57] Workers Union, Local 405, since May, 1934? A. No, I said I was president of the Inside Bakery Workers Local, Federal Labor Union No. 19585, from May 15, 1934, to May, 1937, when we transferred our charter, the American Federation of Labor, to the Bakery & Confectionery Workers Local No. 405, and I continued as president of that organization.

Q. Since May, 1937? A. Right.

Q. You have 3500 to 4000 men in this local, is that true? A. Presently.

Q. And you have by-laws, is that right? A. The local has. true.

Q. And the International Union has a constitution? A. True.

Q. Your local is governed by the provisions of the constitution of the parent body, is that right? A. And by our by-laws, where they do not in any way conflict with the constitution.

Q. Would you have any objection to furnishing me with a copy of the constitution of the parent organization and the by-laws of the local; would you, yes or no? A. No.

Q. May I have that tomorrow morning?

Mr. Sklar: Yes, providing it goes into evidence.

[58] The Witness: Provided it goes into evidence.

(There was discussion off the record.)

Q. (By Mr. Mann) Did Mr. Sanford, when you first came in on July 19th, ask you to show him a copy of your by-laws? A. No.

Q. What did you tell him when you first came into the plant to indicate that you were a representative of the labor organization, or did you show him anything? A. I showed him my card, which had Biscuit & Cracker Workers' Local Union No. 405, Greater New York and Vicinity, on it, and I offered as definite proof of my being the president of the union, that he communicate with the National Biscuit Company,

where we have some 2200 union members, and also communicate with Mr. William Collins, of the American Federation of Labor at 1440 Broadway, and also he could communicate with Mr. Max Kloeppel at 55 West 42nd Street, the district office of the Bakery & Confectionery Workers International Union.

I did not carry and do not carry at any time a letter in which I am referred to as the president of the union, etc., et al.

Q. You talk of Biscuit and Cracker Local. A. That is true.

Q. That is not the same as the Bakery & Confectionery Workers, is it? [59] A. Yes.

Q. Was it the same on August 2, 1937? A. Yes.

Q. Was it the same on July 19, 1937? A. Yes.

Q. In other words, do you mean to tell us this local has two names? A. We are permitted to use one of two names, either directly saying this name, this Biscuit & Cracker Workers Local Union No. 405 of Greater New York and Vicinity, or Bakery & Confectionery Workers International Union of America, affiliated with the American Federation of Labor, or we may Bakery & Confectionery Workers, Local Union No. 405, affiliated with the American Federation of Labor.

Q. And you use those names interchangeably, is that right? A. Interchangeably. When we are working in the field of confectionery in which we are now building up locals of candy workers, we use Bakery & Confectionery Workers Local No. 405.

When we are just working in the field of biscuit and crackers, to enable the workers in each case to see the thing more clearly, we use Biscuit & Crackers there.

Q. In other words, this is a labor organization that has two names, is that right? A. No, those—

[60] Q. Those are two names, are they not? A. No.

Q. One name? A. The same name, only not using Biscuit & Crackers in one instance.

Q. Well, you handed him a card of the Biscuit & Crackers Local, is not that right? A. Yes.

Q. And yet, when you signed the complaint or the charge on the second day of August, you signed Bakery & Confectionery Workers International Union Local 405. Can you give us some explanation on that? A. I have already explained it.

Q. Why did you not sign the same name to the amended charge as the name you handed him on a card? A. No reason other than I told you the workers themselves, should not be confused by the names, the name Biscuit & Cracker, in the candy field, because, as I have already outlined, our local, as such, has been given authority and jurisdiction to organize candy and confectionery workers at the present time, with the theory, as I said, that some time in the future to put a candy workers' local up.

Q. They are a candy and confectionery concern, are they not? A. Who is "they"?

[61] Q. National Licorice Company. A. True, to my knowledge.

Q. For candy and confectionery concerns, you use which name of your local? A. Bakery & Confectionery Workers, Local Union No. 405.

Q. Yet, when you came there you handed him a card of the Biscuit & Crackers? A. And I thoroughly explained the set-up.

Q. I did not ask you what you explained. I asked you only —you are studying law, so I think you ought to make a good witness. A. I am not a student of evidence, as yet.

Q. Yet you handed him a card of the Biscuit & Crackers
184 Local, is that right, Mr. Galvin? A. True.

Q. Now, you handed him your card, and you said you represented the workers, is that right? A. True.

Q. Did you say you represented a majority of the workers? A. True.

Q. Did you represent a large majority of the workers? A. Yes.

Q. On July 19th? A. Yes.

Q. Did you represent the majority of the workers on July [62] 14th? A. Yes.

Q. The first time that Mr. Sanford or anybody in the Na-
185 tional Licorice Company ever heard of either of these two locals was the day you sent the telegram, is that not true? A. I do not know.

Q. Do you not know that? A. I did not present that evidence.

Q. I am asking you whether you do not know that to be the fact. A. I am not testifying to that.

Q. Is that the first time you communicated with the National Licorice Company, when you sent the telegram? A. That I directly communicated, yes.

Q. I show you this telegram and ask you whether that re-
186 freshes your recollection of what you sent on July 14th, 1937, to the National Licorice Company? A. That is true. It also says we represent them for sole collective bargaining agency.

Q. Is that the telegram you sent? A. Yes.

Mr. Mann: I offer it in evidence, both sheets, Mr. Examiner.

Mr. Graham: No objection.

Trial Examiner Korey: There being no objection, it will [63] be marked in evidence as Respondent's Exhibit No. 1.

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 1, in evidence.)

Q. (By Mr. Mann) Did you dictate the contents of this telegram, Mr. Galvin? A. I would not know who dictated it. I think I wrote it, yes.

Q. You signed it, William A. Galvin, President. A. Lots of things are signed in my office that I do not sign.

Q. You signed it? A. Yes.

Q. I notice you signed there "Bakery & Confectionery Workers International Union of America, Local 405". A. Yes.

Q. On the 14th day of July, 1937? A. Yes.

Q. And yet, four days later, on the 19th, you handed a card with a different name on it, is that true? A. What different name?

Q. Biscuit & Crackers, Local 405. A. With a complete explanation to it.

Q. I did not ask about the explanation. I asked you whether on four days later you handed Mr. Sanford, namely, on July 19th, when you came in there, a card with the words, [64] "Biscuit & Cracker Workers Local 405"? A. True.

Q. So when you came in with a card which indicated that you were representing Biscuit & Cracker Workers Local 405, Mr. Galvin, then Mr. Sanford had never heard of that local, but he had heard of the Bakery & Confectionery Workers International of America, Local 405, on the tele-

gram four days before that; is that correct? A. I do not
190 know, I cannot testify what Mr. Sanford knew or did not know.

Q. But your visit on the 19th of July was preceded by this telegram, respondent's exhibit No. 1, dated July 14th, is that not true? A. True.

Q. Between July 14th, the day you sent the telegram, and July 19th, when you walked in there with your card, you had not been in touch with the National Licorice Company or any officer over there, is not that so, either orally or in writing? A. I do not remember. It seems I had a telephone conversation with somebody, but I do not remember.

191 Q. You just said in answer to my question on the 14th of July, 1937, you claimed to have represented a majority of the workers in the plant of the company, is that true? A. That is true.

[65] Q. Did you say that in your telegram, that you represented a majority of the workers? Did you say it? A. Said as their sole collective bargaining agency.

Q. Did you say you represented a majority of the workers of the respondent in that telegram on the 14th day of July, 1937, which you say you dictated?

Mr. Sklar: I respectfully object to that question
192 on the ground the telegram speaks for itself.

Mr. Mann: It is cross examination.

Trial Examiner Korey: We will let him answer.

A. When I say, that the telegram speaks for itself, I say under the law I represent them as sole collective bargaining agency, as I understand it.

Trial Examiner Korey: Answer the question.

The Witness: That is the question.

Trial Examiner Korey: He said, it is in the telegram.

Q. (By Mr. Mann) That you represent a majority of the workers? A. It says "represent the employees of the National Licorice Company, 106 John Street, Brooklyn, New York, as their sole collective bargaining agency."

Q. Do you see the word "majority" in that telegram? A. I did not think it was necessary.

Trial Examiner Korey: Let it speak for itself.

Q. (By Mr. Mann) Do you not know under the law you must [66] represent a majority before you have a right to bargain collectively for them? A. That is why I said I represent them.

Q. Please, Mr. Galvin; you and I will get along fine. A. I know what this means, if you are getting—

(There was discussion off the record.)

Trial Examiner Korey: If the witness and counsel will not hold conversations, we will get along better.

(There was discussion off the record.)

(The last question was read by the reporter.)

A. I know that.

Q. (By Mr. Mann) Do you know that to be the fact? A. Yes.

Q. You did not state in that telegram that you represented a majority, is that true? A. I again say it was unnecessary.

Q. I again ask you to answer whether you stated it in the telegram.

196 Trial Examiner Korey: Answer it, if you know.

A. No.

Q. (By Mr. Mann) Do you now say on July 14th you represented a majority? A. Yes.

Q. Did you ever read this complaint? A. No.

[67] Q. You never read it? A. I do not remember; I would not say. You have a piece of paper in front of you. I do not know what you are talking about.

Q. Did you tell the Labor Board that you represented a majority of the employees on July 14th, 1937? A. I do not think we sent any complaint to the Labor Board before the

197 19th day of July, 1937, and I do not—as I remember it—recall that that complaint had anything to do with majority, but was a petition for an election.

I remember saying to the Labor Board as of July 28th, 1937, in Mr. McCann's office, if that is saying it to the Labor Board, that we did represent a majority of the employees.

Q. I call your attention to paragraph 4 of the complaint, which reads as follows:

"On or about July 23, 1937"—

198 Trial Examiner Korey: Are you reading from the complaint?

Mr. Mann: Yes.

Trial Examiner Korey: I have the 28th, in my copy.

Mr. Mann: All right.

Q. (By Mr. Mann) (Continued reading:)

"On or about July 28, 1937, a majority of the em-

ployees of respondent in said unit designated a labor [68] organization known as the Bakery & Confectionery Workers International Union of America, Local Union 405, as their representative for the purpose of collective bargaining with the respondent."

Do you know where the Labor Board ever got that? A. If it is here as part of the complaint, I imagine they got it.

Q. July 28th is two weeks after July 14th, is it not? A. It seems that way by the calendar.

Q. Do you not know the Labor Board, themselves, when they issued the complaint, never took your date, which date, you now say, you had a majority, as the date on which you represented a majority of the workers? A. I cannot in any way be responsible for what the Labor Board—for what dates the Labor Board takes. I still say on July 19th or 14th, whatever date it was, I first approached the company, we did have a 51 per cent or more majority of the employees of the company represented.

Q. Would you say the Labor Board made a mistake when they drew this allegation of the complaint? A. No, I am reiterating my statement to the effect that on July 14th and again on July 19th, and still on July 28th, we had a majority of the employees of the National Licorice Company.

Q. Do you know any particular reason why the Labor Board [69] picked out the 28th as the date on which the majority of workers designated your union as their collective bargaining agency? A. I do not know any reasons.

Q. Did you have any talk with anybody in the Board about that date? A. I told you the first date I remember being at the Board was on the date I was before Mr. McCann in their room, July 28th.

Mr. Mann: I move to strike out all the testimony
202 of this witness which relates to the fact that he represented a majority of the workers, or his union, on July 14th, 1937, because it is directly in conflict with the complaint.

Mr. Graham: I would say there is no conflict, that there could have been quite clearly a majority designating the union on the 14th, on the 1st, or any other earlier part in July, and said union members could have designated the union on the 28th also.

Mr. Mann: The answer to that, Mr. Graham, I think, is this—because the complaint definitely says,
203 if you read the language, on or about July 28th, 1937, a majority of the employees of respondent in said union designated, on or about that date, on or about July 28th, does not mean July 14th.

Trial Examiner Korey: I will deny your motion.

[70] Mr. Mann: Exception.

Q. (By Mr. Mann) When you wrote the telegram—withdrawn. On July 19th or 20th, you say you made a visit to the plant—I withdraw that.

You did not get an answer to this telegram, respondent's
204 exhibit No. 1, is not that right? They never answered it? A. Not as I remember, no.

Q. And not having received any answer, you waited until either the 19th day of July or the 20th day of July to pay a personal visit over there; is that right? A. Yes.

Q. That is the time you came over with Mr. Bicariello and Mr. Anderson? A. No, just Mr. Bicariello.

Q. Is Mr. Bicariello in court? A. Yes.

Q. Which one is he?

205

Mr. Sklar: Will you stand up, Mr. Bicariello?

(Mr. Bicariello arose.)

Q. (By Mr. Mann) Just you and he, is that right? A. As I remember it, yes.

Q. What time, was it the 19th or the 20th? Do you remember the day of the week? A. No.

Q. Was it in the morning or afternoon? [71] A. About eleven o'clock in the morning, as I remember it.

206

Q. You had not made a telephone call first, indicating that you were coming over, did you? A. I do not think so.

Q. And when you came into the plant, whom did you first see, Mr. Galvin? A. The telephone operator at the door.

Q. After you saw her, whom did you speak to afterwards, one of the executives, I mean? A. The first one I spoke to, I think, was Mr. Healey, who directed us into the office of Mr. Sanford.

Q. Is that Mr. Healey sitting there? A. Yes.

Q. He directed you into the office of Mr. Sanford? A. Into an office in which Mr. Sanford.

Q. And who spoke first? A. Which came first, the egg or the hen? I don't know; I cannot remember.

207

Trial Examiner Korey: All right.

Q. (By Mr. Mann) When you took out that card of the Biscuit & Cracker Workers Local 405 and identified yourself by that card, is that right? A. As I remember the opening part of my conversation—

Q. Did you do that? Let us see what you did. Is not that the first thing you did? [72] A. I identified myself as the person who sent him the telegram.

Q. Did you hand him a card? A. He then asked me did
208 I have anything with me to show who I was.

Q. You took out a card? A. As I remember.

Q. Have you got one of those cards? A. No.

Q. Will you let us have one tomorrow, so we can have it in evidence? A. Yes.

Q. What did you say after you handed him the card, do you remember? A. I just told him we represented the employees, as the telegram suggested, and since he had not contacted us, we thought we would come in and say hello to him about the situation.

Q. Did you say you represented his employees, or did you
209 use the word "majority"? A. I said, "We have more than 51 per cent, and under the law,"—I usually use that expression—"under the law we represent you."

Q. You are sure you said more than 51 per cent? A. I always do.

[73] Q. You did not have anything with you to prove that fact, did you, Mr. Galvin? A. Yes.

Q. With you? A. Yes.

Q. What? A. We had copies of applications with us.

Q. Who had them, you or Bicariello? A. In the bag of Mr. Bicariello.

Q. Mr. Bicariello had a bag with him? A. Brief case.

210 Q. Did you take out those application cards and show them to him? A. We began to—

Q. Did you take them out and show them to him, yes or no; please answer. A. There was no reason to show them.

Q. There was no reason to show? A. I do not know the reason behind your question.

Q. You do not have to know the reason. I am trying to ask you what you did.

Mr. Graham: Mr. Examiner, may I ask you to instruct the witness that he may answer any question yes or no, but if he feels his answer is ambiguous, he may then explain its meaning. 211

[74] Trial Examiner Korey: Answer the question as put by counsel and then you will have all the opportunity to explain your answers.

Mr. Mann: Will you please read the question?

(The question was read by the reporter, as follows: "Q. Did you take them out and show them to him, yes or no; please answer."

A. I think it is ambiguous, because I offered— 212

Mr. Mann: Do not fence.

A. No.

Q. (By Mr. Mann) Yet you came over with Bicariello, who had the cards in a bag, and you now say that no effort was made by you or Bicariello to show those cards to Mr. Sanford, is that true? A. I do not say that. I said before, and I say again, we offered to show them to Mr. Sanford, and offered—he wanted to know whether or not—how would he know they were the right signatures? I said, "Compare them with your payroll." He said, "We do not take signatures on our payroll." 213

Then he said, "Even if you show them to me, it won't make any difference, anyhow, I still don't know whether you represent a majority or what it is or anything else."

So we did not give him the applications for our own reasons, being we did not want to have him intimidate those that have already signed.

[75] Q. Did you have your original cards with you? A. We have original full applications, not cards.

Q. You said in your direct that Mr. Sanford claimed he lacked knowledge as to who you were. Did he say that? That is what you testified to. A. Said something to that effect, yes.

Q. And yet, after he made that statement, you did not, neither you nor Mr. Bicariello, did not take out the cards from the bag to show Mr. Sanford? A. As I said, we did not, because he said it would not make any difference to him.

Q. The cards always remained in the bag? A. True.

Q. Did not Mr. Sanford ask you to furnish some proof to him that you represented a majority of the workers? A. As I said on direct examination, I offered that he get in touch.

Q. Did he ask you? A. He asked and then I told him what to do.

Q. He asked you to present proof to him? A. Yes.

Q. And you had the proof in the bag, but you would not present it? A. No, he did not ask us—I misunderstood the question. He asked me to present proof.

[76] Q. Let me put the question again and let us get the answer—did Mr. Sanford ask you to present proof that you represented a majority? A. No.

Q. A minute ago you said yes. A. That is why I told you.

Q. Is the answer no, now? A. He did not ask us to present —we offered to present proof.

Q. What did you say? A. We offered.

Q. You offered and he said he did not want to look at it; is that it? A. I went through it before. He did not—he said he did not have any way of proving the signatures were genuine, and he had no—I said, "Why not use your payroll signatures?"

He said, "We don't use that method." He said, "Anyway, it would not make any difference what you have there." So we did not present them to him.

Q. So then what happened, nothing? A. We presented the —I said, "Anyway, here is our list of demands your employees have asked us to present to you," and we gave him that paper in which the demands were listed.

[77] Q. I show you a paper and ask you whether this is the list of demands that you are referring to, which you presented on July 19th to Mr. Sanford and Mr. Healey? A. Yes, I think so.

Mr. Mann: I offer it in evidence.

Mr. Graham: May I see it, please?

(Mr. Mann handed the document to Mr. Graham.)

Mr. Graham: Counsel, copy of the agreement has a note at the top, "Demands and reply."

Mr. Mann: I wanted to ask him about that, in whose handwriting it was. I have a reply here.

The Witness: That is not my handwriting.

Trial Examiner Korey: These notations at the top of the page?

The Witness: Not my handwriting; I do not recognize it.

Q. (By Mr. Mann) Those are the demands you presented, are they? A. That is right, except the written notations thereon.

Trial Examiner Korey: I suggest before it goes

into evidence that that be erased so we won't know what was on it.

(Mr. Mann erased the notations that were written at the top of the document in question.)

Trial Examiner Korey: There being no objection, it [78] will be marked Respondent's Exhibit No. 2.

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 2, in evidence.)

Q. (By Mr. Mann) One question about these cards, I want to ask you—is it not a fact that Mr. Bicariello refused to show the cards, saying they might be used to intimidate witnesses, do you remember that? A. I never had any cards. I have not spoken about cards.

Q. Those applications, those that you had in the bag. A. As I explained before, under the circumstances, he did say that.

Q. Mr. Bicariello really did say that? A. Yes, sir.

Q. So you did refuse to show the cards or Mr. Bicariello did, in your presence, giving it as an excuse that they might be used to intimidate witnesses?

Mr. Graham: I would object to the form of that question.

A. Yes—I cannot answer that.

Q. (By Mr. Mann) The answer is what? A. I cannot answer that.

Mr. Mann: He just answered that a minute ago.

Mr. Graham: He did not answer.

Mr. Sklar: He said he could not answer that question, yes, when Mr. Graham said he objects to the form of the [79] question. 22

(The question was read by the reporter.)

Trial Examiner Korey: Do you know the answer to that?

The Witness: As I said, under the circumstances, Mr. Sanford said it would not make any difference to him, anyway.

Mr. Mann: We did not ask that. We asked about Mr. Bicariello.

Trial Examiner Korey: He is telling why the answer was made. 224

The Witness: By saying that, you give the impression here we refused to present evidence.

Q. (By Mr. Mann) I asked you a very simple question. Did not Mr. Bicariello refuse to show the cards, claiming as a reason for his refusal that they might be used by the National Licorice Company to intimidate witnesses? A. After Mr. Sanford refused to take the applications as evidence that we did have a majority, he refused to let him have them if they were not going to be used for the purpose we wanted them used for, as a proof we had a majority. He felt then, I suppose—he said that because he knew it would be used to intimidate witnesses. 225

Q. How many cards did you have in your bag at that time? A. I would not know; more than 51 per cent of 135, which [80] is our understanding of the count of the cards in the file at the time of the telegram.

Q. Did you mention any number of cards to Mr. Sanford, that you had in the bag, number instead of percentage? A. I still think I must have said, as we usually do—

Q. Do you remember? A. 51 per cent or more.

226 Q. I did not ask you. A. No.

Q. By number, you did not? Did you count them before you left your local office that day? A. Yes.

Q. Who counted them; you? A. We counted them the night before.

Q. Who counted them, you? A. I did, yes, sir.

Q. Do you remember how many you counted? A. No, not exactly.

Q. What do you mean by that answer? A. I knew it was more than 51 per cent of 135.

227 Q. Do you remember how many in numbers you counted? A. No.

Q. You did not know how many workers they had there, did you? A. Yes.

[81] Q. From whom? A. From the employees who counted the cards in the racks and told me how many employees they have working there.

Q. From the employees who counted the cards in the racks? A. Time cards.

Q. How many did they count? A. Approximately 135 at that time.

Q. Is it 135 or approximately 135? A. The company said 140, so between 135 and 140 would be the answer.

228 Q. When did the company say 140, today? A. In your references here to the Board, earlier this afternoon.

Q. Today? A. Yes.

Q. At that time you did not know how many they had? A. I still say we had approximately 125.

Q. Did you ask Mr. Sanford on the morning of July 19th how many employees he had? A. I do not think so.

Q. Were those demands you left there on the 19th discussed in any way? A. By whom, with whom, and—

Q. Where is that exhibit? You are sure you left it there on the 19th?

[82] Q. How long did you and Bicariello stay there that morning? A. Somewhere around an hour.

Q. And were you and Bicariello—there was Sanford and Healey and who else in the room during that hour? A. I think Mr. Carpentier, Mr. Smiley came in just at the last minute.

Q. What transpired in that hour after you had presented those demands, Mr. Galvin? A. Mr. Sanford took the demands from my hands, threw them over his shoulder on a desk, and did not read them in all the time that I was there until Mr. Smiley came in and crossing behind Mr. Sanford, took the demands off the desk and started to read them, referred to something in there to Mr. Sanford, and Mr. Sanford read them, or read some clause, or something. I do not know what he read, if he did read anything.

Q. There was no bargaining there that day? A. Refusals to bargain.

Q. The reason they gave for refusing to bargain was because they did not know whom you represented or whether you represented a majority of the workers or not, is not that true? A. They refused to accept proof we did represent the majority of the workers.

[83] Q. Which proof? A. The applications we had there.

Q. They refused to accept them? A. Yes.

Q. You never took them out of the bag? A. Because they said—

Q. You never took them out of the bag? A. He said they would not mean anything to him, anyway. That was a refusal to accept them. We offered and they refused.

Trial Examiner Korey: All right.

232 Q. (By Mr. Mann) So, on the 21st—you remained there an hour, approximately? A. Maybe an hour an hour and a half, maybe more.

Q. What was the end of that conversation, did you make a further appointment to meet again or did you go out without anything definite in mind? A. As I remember it—procedure that is not unusual with employers—

Q. What was done? A. They just did not do anything.

Q. They did not do anything, and you did not do anything? A. We said they should look over the demands, anyway, and
233 we would try to get in touch with them at some future date. It would be the best thing to do, and maybe we could get [84] together on some sort of agreement.

Q. Did you not say, of course, you did not expect them to comply with all those demands that were in there, did you not say that? A. I said I thought he would be foolish if he just set down and signed it without reading it, if that is what you mean.

Q. I do not mean that. Did you not affirmatively state you did not expect them to comply with all these demands there were in here? A. I said, if I recall properly, that about the only thing I did not expect to get in fully were the wage re-
234 quirements.

Q. Wage increases. Did you comment about any other specific item? A. Or that they might not want to use the union label.

Q. Did you think that they would be willing to sign a union contract? A. Yes.

Q. You thought they would be? A. Legally, I thought they would be.

Q. What do you mean by that, "legally"? A. I thought, under the National Labor Relations Law they would feel once they had to bargain with the union, they would think it was the best thing to have a contract to [85] keep the union within the bounds.

Q. You know legally they are not required to sign a union contract? A. I did not say "required". I said I thought they would reasonably sign it, for their own protection, not mine.

Q. You were very optimistic that day? A. I am definitely pessimistic in my business.

Q. All right. The first thing when they looked at that, they told you they would not sign a union contract, did not they say that? A. No—Yes, I think they said something to that effect, they would never sign a contract with a union. He threw it over his shoulder, I do not know whether you could say he looked at it.

Q. Then you left the demands there and the next thing you did on July 21st, you went to the Labor Board, is that right? A. No, on the 19th.

Q. The same day? A. The same day.

Q. And whom did you see there? A. I did not go over, my attorney represented me. I say "I"—when I say that, I mean—

Q. You mean you instructed your attorney to go over, is that right? [86] A. We were represented by counsel.

Q. And did you file a charge over there? Is that what you told him to do? A. I think a petition for election.

Q. Do you know whether that was done? A. I presume it was. I have signed so many papers.

Q. Do you know whether that was done? A. I presume it was.

Q. That was on the 19th. What happened on the 21st, do
238 you know? A. As far as I was concerned?

Q. Yes. A. I do not know directly to what you are referring.

Q. Have you any recollection whether anything happened on the 21st? A. Many things in my business.

Q. On the 21st—I am talking about the 21st. A. I would not say directly. If you want to bring out anything, you have to ask me the question, because I do not know what you are referring to. If you ask me what happened on the 20th—

Trial Examiner Korey: All right.

239

Q. (By Mr. Mann) Did you say something happened on the 20th? A. Yes.

[87] Q. What? A. Mr. Sanford called a meeting of the employees.

Q. I am not asking about what Mr. Sanford did. I am asking you about what the Board did. A. I do not know what the Board did.

Q. I ask you to look at this letter dated July 21st, from the National Labor Relations Board, addressed to the respondent. A. I think we probably got one at the same time, Mr. Counsel.

240

Mr. Mann: I offer that in evidence.

Mr. Graham: No objection.

Trial Examiner Korey: There being no objection, it will be marked respondent's exhibit No. 3.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 3 in evidence.)

(There was discussion off the record.)

Mr. Mann: I have a copy here. If you have not the original, let us look at this.

Mr. Graham: Here it is, July 22nd.

Mr. Mann: May we have that, so we may offer it in evidence? I want to get the chronology of this so the Examiner may get the whole picture of what happened here.

I offer this paper in evidence, which is the reply, dated July 22, 1937, to respondent's exhibit No. 3.

[88] Trial Examiner Korey: There being no objection, it will be marked respondent's exhibit No. 4.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 4, in evidence.)

Mr. Mann: Now, I offer in evidence a paper dated July 23rd, written by the National Labor Relations Board to the National Licorice Company, which is in reply to the last exhibit, which was respondent's exhibit No. 4.

Mr. Graham: No objection.

Trial Examiner Korey: There being no objection, this will be marked respondent's exhibit No. 5.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 5, in evidence.)

Mr. Mann: This last exhibit, respondent's exhibit

No. 5, refers to a meeting which the Board is calling
244 for July 28th, and pursuant to that letter, you did meet at the Board on July 28th in the office of Mr. McCann, is that right?

The Witness: True.

Q. (By Mr. Mann) Did you have any proof with you at the Board meeting on July 28th which indicated that at that time you had represented a majority of the workers of the National Licorice Company? A. Yes.

Q. By that you mean that you had the same cards that you [89] claimed you had in the office of the National Licorice
245 Company on July 19th? A. Those and more.

Q. How many more did you have on the 28th than you had on the 19th, do you know that? A. No.

Q. You cannot give us any estimate of that, Mr. Galvin, is that right? A. No. I can give you an estimate—I know about what it was—at that time we had close to over 90 per cent of the plant, from my recollection.

Q. You had all the cards with you then? A. All the applications, yes.

Q. Did you show them to Mr. McCann? A. We had shown them previously to Mr. McCann.

Q. What do you mean by "previously"? Before the 28th,
246 you mean? A. I think so. He wanted us to prove that, and I think it is the Labor Board's policy to prove we were bringing in a legitimate complaint.

We presented it to him to prove that point, but not to pass them on as to number to the employer in any way. It was at that conference that Mr. McCann brought that out, as I remember it, he asked Mr. Sanford how many employees they had, I think. Mr. Sanford gave him an idea that cor-

roborated [90] our statement pretty closely and Mr. McCann then realized the number of applications we had shown him was sufficient to have had more than 51 per cent. 247

Q. Did he so advise Mr. Sanford when you came there on the 28th? A. I do not remember whether he deliberately advised him as such, but he asked Mr. Sanford if he would not bargain collectively with us, because he was satisfied.

Q. Did Mr. Sanford ask Mr. McCann whether or not he would tell him that your union represented a majority of the employees at that time? A. I do not remember. I think Mr. McCann made a deliberate statement.

Q. To Mr. Sanford? A. To the effect—

Q. To the effect he was satisfied you did have a majority of the employees? A. As soon as he found out approximately how many employees there were, Mr. Sanford more or less corroborated our statement to that effect. 248

Q. When that happened, Mr. Sanford then agreed to bargain with your union the following day, is not that right? A. He said he would, yes.

Q. On July 29th you and Mr. Sklar met at the office of the National Licorice Company for the purpose of bargaining, is [91] that right? A. Mr. Sklar, Mr. Bicariello and Mr. Anderson.

Q. Who was there on behalf of the company? A. Again, as I remember it, Mr. Healey, Mr. Smiley, Mr. Sanford, and a stenographer. 249

Q. What time was this that you got there? A. Approximately 2:00 in the afternoon.

Q. How long did you remain; do you recall that? A. About two hours.

Q. And this exhibit, respondent's exhibit No. 2, dated

July 19th, which is the demands of the union, that was taken
250 out, was it not, and discussed? A. Taken out by whom?

Q. By anybody? A. I guess I have copies of it in front of me and a copy in front of other officers.

Q. This one, the one we produced here at the hearing this afternoon, that was the one that was taken out by Mr. Sanford, was it not? A. I do not know what he had on his side. He was reading from some paper.

Q. You spent two hours discussing these demands, is that right? A. No, just listening to Mr. Sanford read off from the paper.

[92] Q. You did not do only listening, did you? You did
251 some talking? A. Yes, I asked him what he meant by certain clauses and after some hesitation, he would go back and say, "I will read this over to you again." That is why it took some two hours to hear the whole story.

Q. Was each paragraph of your demands, which is respondent's exhibit No. 2, discussed? A. No discussion, just Mr. Sanford read off what he had and there was nothing we could say that would change what he had written on some piece of paper.

Q. Well, he read paragraph 1, did he not,—"The union is the sole collective bargaining agency for all the employees of the company who are not in an office or supervisory capacity." Was that read? A. I do not know whether he actually read—do not remember whether he actually read our clause there and then read his, or whether he just referred to ours as paragraph No. 1 and then went to read his.

Sometimes I think he did, sometimes I think he did the other.

Q. I ask you, did he read that clause or did anybody read

it—"The union is the sole collective bargaining agency for all the employees of the company who are not in an office or supervisory capacity"? Was that read by anybody, [93] or did everybody keep quiet about it? A. Well, if you can understand the procedure, then you will understand. 253

Q. Mr. Galvin, won't you please answer that question? That is so simple a child can answer it. That is very simple. A. I am trying to do that.

Q. There is nothing difficult about it. A. I am trying to take that clause and out of all the clauses in the contract, say—

Q. I am going to ask you about every clause, so forget it. A. Then, understand my position. I am trying to take that clause out of all the clauses in the contract, some of which were read and some of which were not read by Mr. Sanford. 254

Trial Examiner Korey: Tell us if you remember.

The Witness: I do not remember if that one was read.

Trial Examiner Korey: Mr. Mann, I heard you say something about cross examining him on each and every clause, and I do not deny your prerogative to do so. I want you to take every opportunity you can to protect your client's interests, of course, but in view of that statement it seems to me we may go much over the time tonight. 255

It is after five-thirty.

[94] Mr. Mann: Yes, your Honor. I will probably be two or three hours yet.

Trial Examiner Korey: If you are going to be much longer with this witness—

Mr. Mann: I have plenty to ask.

Trial Examiner Korey: In that event, we may as well adjourn.

Mr. Mann: Perhaps that would be the best thing to do, as I have considerable yet to ask.

Trial Examiner Korey: Very well.

We will adjourn at this time, then, and convene again tomorrow morning at 9:30.

(Whereupon, at 5:35 o'clock p. m., Wednesday, October 13, 1937, the hearing was adjourned to 9:30 o'clock a. m., Thursday, October 14, 1937.)

[95] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. II—C—740. 259

In the Matter of
NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY.

Room 419, Old Post Office Building, 260
New York, New York,
Thursday, October 14, 1937.

The hearing was resumed, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

H. R. KORBY, Esq.,

Trial Examiner.

Appearances: 261

CHARLES E. GRAHAM, Esq. (233 Broadway, New York, New York), on behalf of the National Labor Relations Board.

KOTZEN, MANN & SIEGEL, Esqs. (51 Chambers Street, New York, New York), attorneys for the Respondent, by
ABRAHAM MANN, Esq., and
JOSEPH YASPAN, Esq., of counsel.

KALMAN SKLAR, Esq. (521 5th Avenue, New York, N. Y.),
262 appearing for Bakery & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity.

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[96] PROCEEDINGS

Trial Examiner Korey: Gentlemen, are we ready to proceed?

Mr. Mann: Yes, your Honor.
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WILLIAM A. GALVIN, resumed the stand as a witness by and on behalf of the National Labor Relations Board, and having been previously duly sworn, was examined and testified further as follows:

Cross Examination (Continued):

Q. (By Mr. Mann) Mr. Galvin, at the conclusion of the session last night, we arranged that you would bring a copy
264 of the constitution of the parent body, the by-laws of the local, and that card which you said you offered Mr. Sanford when you first came in as identifying yourself. Is that the card? A. Yes.

(The witness handed one of the cards to Mr. Mann, also one to the Trial Examiner and one to Mr. Graham.)

Q. (By Mr. Mann) You have produced a card this morning, Mr. Galvin, which you say is a duplicate of the card

you showed Mr. Sanford when you came in on July 19th or 20th, the first time? A. Printed in the same batch of cards.

Mr. Mann: I offer this card in evidence.

Mr. Graham: No objection.

[97] Trial Examiner Korey: There being no objection, it will be marked in evidence as respondent's exhibit No. 6.

(Thereupon, the card above referred to was marked as Respondent's Exhibit No. 6, in evidence.)

Mr. Graham: The card which has just been admitted into evidence and labeled respondent's exhibit No. 6, is a small white card bearing in the upper left hand corner the telephone number of the union, then the name of the individual to whom the card is issued, in this case William A. Galvin.

Below that it says, "President," and below that "Biscuit & Cracker Workers Local Union No. 405, Greater New York and Vicinity"—on two lines.

In the lower left hand corner of the card is printed, "Bakery & Confectionery Workers International Union of America" and on the lower right hand corner of the card is printed "245 West 14th Street, New York, New York."

Q. (By Mr. Mann) Now, Mr. Galvin, on the 29th day of July, where you were in the office of Mr. Sanford, together with Mr. Bicariello and Mr. Sklar and one or two others whom you mentioned yesterday, and were conferring there

for about two hours, you had this agreement, respondent's exhibit No. 2, with you, did you not? A. Copy of it, yes.

Q. Yesterday you had a paper here which was not offered [98] in evidence, but which was similar to respondent's exhibit No. 2, with some notes on it. A. Carbon copy of respondent's exhibit No. 2.

Q. Carbon copy. Have you got that here this morning? A. That is what I was waiting for counsel for.

Q. He has got it? A. Yes.

Q. As you were sitting there and talking, were the officers of the respondent—did you have a copy with you? A. Yes.

Q. And while you were doing this talking and conversing and discussion, was that the time you made those pencil notes on that paper? A. That is while I was listening to Mr. Sanford read off from the sheet of paper that he had. I made notes as to the substance of what he was reading, one or two words, sometimes three or four.

Q. So that while Mr. Sanford and the other people there and yourselves were talking, you made certain notes on that paper? A. Yes.

Q. Have you any objection to offering that paper in evidence? A. Yes.

Q. You have? [99] A. Yes.

Q. Would you mind stating the reasons for your objection? A. Well, I do not know exactly what everything is that is on that paper. There may have been other notes I wrote that were not exactly what Mr. Sanford said at that moment. I do not know.

I am saying this without seeing the paper. I would have to look at it to see what I am talking about.

Q. After Mr. Sklar comes in here this morning with the paper, and you have the opportunity to look it over, will

you then tell me afterwards whether or not you still urge the objection? A. I will tell you after I look—just which of 271
the things I know definitely were my notes as to what Mr. Sanford said, and which of the things are probably my own notes, for some reason or another.

I can tell you by looking at them.

Q. At the conclusion of the hearing last night, I was asking you about paragraph 1 in this respondent's exhibit No. 2, and I read it to you as follows:

> "The union is the sole collective bargaining agency for all the employees of the company who are not in an office or supervisory capacity." 272

Was that clause read at this conference on July 29th? A. No.

[100] Q. By nobody? A. The only reference to that clause was—

Q. Was it read? A. No.

Q. It was not read? Was it discussed? A. After Mr. Sanford read off his—

Q. I asked you was it discussed, the answer to that is either yes or no. A. My interpretation of the word "discussed"—

> Trial Examiner Korey: Did you have a discussion 273
> on that particular clause?
>
> The Witness: What actually happened, Mr. Sanford read clause 1 and the answer. I said to him then under the law—
>
> Trial Examiner Korey: The answer is, you did discuss it?

The Witness: I do not consider that a discussion
274 unless both sides quarrel about it or discuss it. Very well, I am sorry.

Q. (By Mr. Mann) Did not Mr. Sanford say in answer to that clause that the company is perfectly willing to recognize your union as the representative of their workers who may be members of your union at the same time realizing that you do not represent all of the workers?

Did not he say that, in words or substance? A. As I remember his answer it was—

[101] Q. Did he say that in words or substance?

275 (The question was read by the reporter.)

A. In substance, yes.

Q. (By Mr. Mann) Paragraph 2 of respondent's exhibit No. 2, which is your agreement and your demands presented to the respondent, reads as follows:

"The company shall employ none but bona-fide members of the union who are in good standing."

Was that clause read and discussed? A. It was not read.

Q. Was it discussed? A. Insofar as Mr. Sanford read
276 off from a sheet of paper, yes.

Q. And did he say to you in answer to that demand No. 2 in your contract, something like this: That the company cannot agree to the closed shop and will not agree to hire only members in your particular union—did he not say that? A. No.

Q. Did he not say that the company believes in the American principle that every man has the right to seek employ-

ment wherever he sees fit at whatever terms are acceptable to him? A. He might have said it, but I do not see how it would be an answer.

[102] Q. Did he say that? A. I do not remember the exact words.

Q. Did he say the Wagner Act does not require a closed shop or can the company force any of its employees to join a union against their will? A. I think he said something like that.

Q. Did you insist that there must be a closed shop agreement with you? A. There was no further discussion on that point.

Q. Paragraph 3 of your demand relates to the wages of all male employees who are on an hourly basis and also relates to the wages of female employees who are on an hourly basis, and then it talks about the rate of all piecework operators, does it not? A. You mean, it talks about a request for increase in such wages?

Q. Yes. You remember what your contract says about that, do you not? A. Approximately, I have seen twenty-six contracts since that time, at least.

Q. Without going over the subdivisions A, B, C, D, and E of Paragraph 3 of the respondent's exhibit No. 2, what was said between you, Mr. Sanford and the others in that room about that? A. What is that paragraph referring to?

[103] Q. The wages, increase. A. You said A, B, C, D and E.

Q. "A" is the wages of male employees on an hourly basis. "B"—look at it. A. That is the minimum wage.

Q. That is the exhibit. A. Paragraph 3-A asks for increase of 30 cents per hour for male employees. Paragraph 3-B asks for 15 cents an hour increase for female employees,

paragraph 3-C requests an increase of 50 per cent over the
280 present piecework rates. Paragraph 3-D states that no employee shall be transferred from hourly basis to piecework basis or piecework basis to hourly basis without the consent of the union.

Paragraph 3-E asks that a guarantee of 50 cents an hour for all piecework employees who may be required to do hourly rate work while under another clause—while working for their scheduled eight hours.

As far as that goes, I remember this whole 3 section was covered by something to the effect it was preposterous and ridiculous, etc.

281 At that time, I mean the first primary statement of Mr. Sanford to the terms—

Q. You mean by that that Mr. Sanford said that that demand was very preposterous on the part of the union, is not that what he said? [104] A. Something to that effect.

Q. And you, yourself, believed, did you not, when you were sitting there on July 29th, that that was a preposterous demand in a shop like this? A. I do not know what I believed on July 29th.

Q. Did you not have any idea what would be a fair increase in wage? A. All I had was the idea the employees had requested that these demands be presented to the em-
282 ployer and I was just following the dictates of his employees.

Q. Do you not remember Mr. Sanford saying to you in words or in substance that it is evident from these preposterous demands in this paragraph 3 that you, Mr. Galvin, and your union, know nothing about "our industry and are novices in the field"? Did he not say that? A. It is possible he did.

Q. Did he not say the increase asked for in that para-

graph, in the piece rate operations, would force the company out of business since their principal products are for the one cent, five cent and ten cent trade, the majority of their business being for the one cent trade?

Did he not say that? A. Perhaps he said something to that effect.

Q. Did you know when you came there that the majority of their business was the penny candy business? [105] A. I had some idea of that.

Q. When he told you that, did you ask him whether or not he would submit the books of the company to you to verify his statement about the kind of business they were doing, the volume of business, the profit in the business, the overhead? Did you ask for anything like that? A. He offered that.

Q. He offered it. Did you agree to look at it? A. No, for the reason that I say, all employers do the same thing.

Q. You said no. That is enough.

Did he not say if you agreed to offer or submit a 5 per cent increase, that he would consider that? A. You are following the procedure of what he said, one after the other. May I ask a question?

(There was discussion off the record.)

The Witness: May I ask a question?

Mr. Mann: Not from me. I would not answer.

(There was discussion off the record.)

Q. (By Mr. Mann) Did he not say that if you would submit an offer of a 5 per cent increase, they would be glad to entertain it and consider it? Did he not say that at any time there?

I do not care whether it was at two o'clock or three-thirty
286 or a quarter to five. Did he not say it at any time [106] on that 29th day of July, the day that you were in there with your associates, bargaining there? A. Do you mean that he would consider it as a demand of the union or his employees?

Q. As an offer which he was making in answer to your demand. A. No.

Q. He did not say that? A. Not as an offer in answer to our demands.

Q. As to what? A. He would make such an offer to his individual employees if we would present it to his individual employees.

287 Q. But you were discussing then, Mr. Galvin, their agreement? A. No, we were not. At that point I wanted to bring out as to time. This was said two hours later.

Q. Of that day, two hours later, did he make that offer? A. To his individual employees through us.

Q. That was an offer in answer to your demands in paragraph 3? A. Again I say, it was not an answer to our demand. It was an offer he was making to his individual employees, not to the union.

Q. He was making it to you as a representative of the union, was he not? [107] A. No, still as to the individual employees through us, that is all.

288 Q. But he was talking to you? A. Talking to me, yes, but the offer was not to me.

Q. The individual employees were not there? A. Talking to me, but made to the individual employees and asked us to bring it to their attention, to them, that they should sign individual contracts after they had accepted the offer.

Q. What you mean, I assume, by your answer is that he was talking it to you, making it to you on behalf of the employees, is that not right? A. As I have qualified it, yes.

Q. What did you say about that offer? A. I said it was the same offer he had given to his employees on or about July 20th and previous to that time, and had been refused by his individual employees at that time. 289

Q. You were refusing on behalf of the employees and the union, is that right? A. I told him if I brought that to his employees, they would still feel the same way about it.

Q. How did you know they would feel the same way about it without discussing it with them? A. Only have spoken to their representatives and committee the night before we went to see Mr. Sanford, supposing and [108] hoping these demands would be discussed properly there.

Q. So the sum and substance of what transpired that day between you and Mr. Sanford with reference to this increase of wages is that you asked for this increase as specified in paragraph 3 of respondent's exhibit No. 2, and Sanford offered you 5 per cent and neither one, neither you nor Mr. Sanford was agreeable to doing anything about that, outside of those two offers made, is that right? A. No; the sum and substance of what happened there was Mr. Sanford refused to recognize the union as the bargaining agency for the employees, but would use the union as an agent or as agency to offer to the employees a rate of 5 per cent raise, and if the employees accepted, then the employees could sign an individual agreement with him on those terms. 290 291

Mr. Mann: I move to strike that answer out because it is not responsive to the question.

Trial Examiner Korey: It is responsive.

Mr. Graham: I feel it is responsive because—

Trial Examiner Korey: I have ruled on that.

Mr. Mann: I except.

Q. (By Mr. Mann) You say that he was not recognizing
292 the union as the bargaining agent, yet he was sitting with you for two hours and had told Mr. McCann the day before that he would recognize you as the bargaining agent, and [109] would bargain with you, and the appointment was then made for the following day, namely, July 29th, and you came there as you have already testified and sat there with them and talked two hours? A. I must clarify your two-hour statement. There was about—

Q. That is what you said yesterday. A. Probably I inadvertently forgot we spent more than a half hour looking over the company's products and display outside of the office where
293 he was showing us some of his penny goods and telling one of our members who happens to be interested, showing him a mixed licorice variety, the type of mixed licorice variety he was making, etc.

Q. You see, you are talking about burdening the record. You said yesterday two hours, now you make a big speech about something which has nothing to do with it, and I still don't know how long you talked there. A. I would say we spent over a half hour of the time we were present on the premises. We were not thrown off the company's premises, but we still were—we might as well have been talking about the weather, as far as collective bargaining is concerned.

294

Mr. Mann: I move to strike all that out.

Trial Examiner Korey: Strike that part out.

Q. (By Mr. Mann) How long were you talking about these [110] things here, that is what I am asking about, respondent's exhibit No. 2? A. Mr.—

Q. How long, Mr. Galvin, won't you please— A. I was talking—

Trial Examiner Korey: Now, how long did you discuss the propositions in respondent's exhibit No. 2? 295

The Witness: I said approximately some time over an hour, an hour and a half, we were in the office.

Q. (By Mr. Mann) Paragraph 4 of respondent's exhibit No. 2 relates to hours of work. There you also have five subdivisions, A, B, C, D and E.

I won't read them all, but I will ask you whether there was some talk about the hours between you and your representatives and Mr. Sanford and his representatives, on the 29th day of July? A. The first—

Q. Look at it. A. 4-A has to do with hours of work. 296

Q. Was there any talk—let us try to make the record briefer. A. Mr. Sanford read some statements and we did make some remarks about his statements.

Q. Do you remember what he read and said? A. Exactly, no, other than give you what—

[111] Q. See if I can refresh your recollection, did he not say the company does work and has been working for many years on an eight-hour day or a forty-hour week? Did he not say that? A. Something like that, yes.

Q. Did he not say that very thing, not something like it, but that? A. Word for word, verbatim, the stenographer did not take the notes. 297

Q. I am not asking about a stenographer. I am only asking what he said.

(There was discussion off the record.)

A. I cannot be burdened with the exact words. I said in substance he said that—

Q. Did he not say also overtime rates cannot be paid by the company, due to the nature of their business? A. He said something to that effect.

Q. Did not he say that double time for holidays and Sundays is immaterial to them since they never work on those days? Did he not say that? A. I do not remember exactly that, no.

(There was discussion off the record.)

Q. (By Mr. Mann) As to paragraph 5, your demand was that the present employees of the company having more than one year's service, shall receive two weeks' vacation with [112] pay. Did not Mr. Sanford say in answer to that, that he could not possibly agree to that, that it is impossible for the company to give two weeks' vacation with pay? A. He said something like that. He added something to it.

Q. Did he not offer to give one week's vacation with pay? A. At that point he said he might consider one week's vacation with pay. He did not offer.

Q. All right. What did you say about that? What did you say about that one week's vacation with pay, did you say that that was unsatisfactory to your union? A. Since it was not an offer—

Q. Did you say it was not satisfactory? A. No, I did not say anything.

Q. Did you insist on two weeks' vacation with pay? A. We did not say anything further at that time.

Q. All right.

Paragraph 6 of your demands relates to the share-the-work method? A. Yes, a division of the work during slack periods.

Q. Was there some talk about that, Mr. Galvin, that day? A. As I remember, he said something about it was the share-the-work method which he would refuse to—he read

off something to the effect that he refused to accept it as having failed and they had done it under the Hoover administration and something of that sort, and did not find it [113] practicable or something of that sort. 301

Q. Did not Mr. Sanford say at that time in words or substance that the company cannot commit itself to the share-the-work method of operations, further saying that has been time and again proven unworkable by leading economists, and that it brings a great hardship on the vast majority of workers who are deprived of earning a fair living in order to support the incompetent workers who could never earn a living?

Did he not say that? A. He said that. 302

Q. Were you satisfied with that explanation as to what his opinion of the share-the-work method was? A. I was not satisfied because it showed the complete lack of knowledge of what we requested in the contract.

Q. Paragraph 7 reads as follows, subdivision A:

> "All new employees of the company shall make application for membership to the union after a trial period of one week."

Was there some discussion about 7-A? A. As I remember it, Mr. Sanford said something to the effect that that tied up with clause 2 and they would not have a union shop, or something of that sort. 303

Q. Did he not say—that is right—did he not say in words or substance that the company could not inform and [114] would not inform its new employees they must join a union, for the reasons which he had previously given you, namely, that he would not make a union contract with you? Did he

not say that? A. Yes, he said he would not sign a union
304 contract with us.

Q. Then, 7-B, relates to new employees on piecework and your demand was that they shall be paid the prevailing rates per unit, except that during the first month's employment they shall be guaranteed wages at the rate of 40 cents an hour.

Did not Mr. Sanford say that the company would not and could not in any manner increase its rate of pay to learners or beginners or new workers beyond 35 cents an hour for females and 40 cents an hour for males? Did he not say that? A. In substance, something like that.

Q. Was that agreeable to you? A. I do not understand
305 what you mean by agreeable to me.

Q. Did you say that that would be satisfactory to you? A. We were only listening, writing down what Mr. Sanford said. I do not think I said it would be satisfactory.

Q. Did he not at that time also remind you that the rate under the NRA was 32 cents for females and 35 cents for males—do you remember that? A. He said something to that effect.

Q. As to paragraph 8, subdivision A, your demands in respondent's exhibit 2, it reads as follows:

> "A delegate for each department whose duty it shall
> 306 be to attempt adjustment of any grievances therein shall be appointed by the union."

Did Mr. Sanford discuss that with you, Mr. Galvin? A. I do not remember. He probably read something off about it.

Q. Did he not say that the company is always willing to listen to fair grievances and to adjust any wrong that may exist, but it cannot give the union permission to having delegates visit the shop at any time?

Did he say that? A. That what you are saying now has nothing to do with the clause you just read.

307

Q. Did he say it? A. He probably did, yes.

Q. Did he not say that the union may present its cases to the management and the office in the proper manner, but that access to the plant by a delegate is out of the question? Did he not say that? A. I do not remember.

Q. Paragraph 9, "The company, by arrangement with the union, may print a Bakery & Confectionery Workers Union label on its candy wrappers without cost or may affix same to all its products at a charge of 15 cents per 1000 labels [116] when its products are produced under the conditions hereinabove agreed to."

308

What did he say about that? A. As I remember, something to the effect he was not interested in it.

Q. Did he not say that you could put it in or leave it out, that it did not make any difference to him what you did with that? Is not that what he said? A. I said he said something to the effect he was not interested in it.

Q. Did he not say that that was one of the things he would agree to, a union label? A. No.

Q. He did not? A. I do not think he said he would agree to anything in that contract.

Q. Did he say it was immaterial to him whichever way it was done, either the label on or label off? A. As I still understand, remember, he said he was not interested in it.

309

Q. Paragraph 10. "The company shall not discharge any employee without previous notice and discussion with an officer representing the union." That is paragraph 10 of your demands.

Was there any discussion on that? [117] A. I said that yesterday, said something about the inalienable right.

Q. Was there a discussion between you and Mr. Sanford
10 on that subject? A. Mr. Sanford read something off from a piece of paper about it.

Q. Did he not say this—the company does not intend to have the union at any time interfere with the management or operations of the company, the company insists upon maintaining the inalienable rights of the employer to discharge employees without reporting to or obtaining permission from any union to do so?

Is not that what he said? A. Something like that in substance.

Q. Paragraph 11, "In the event of any dispute, that may
11 arise during the life of this agreement, that cannot be satisfactorily adjusted; the same shall be referred to arbitration by a committee of three persons who shall be designated as follows: One to be selected by the union, one to be selected by the company, and the two so selected to choose a third person. Should the first two fail to choose a third person within five days, the United States Department of Labor should be requested to designate a third and impartial person."

"The arbitration board so constituted shall render a [118] decision within forty-eight hours. This decision thus rendered shall be accepted and binding upon both parties."

12 What was said about that, Mr. Galvin? A. If I remember correctly, it was something to the effect that what would arbitrators know about our business, or something of that sort, as I remember it.

I have had so many different answers to that, I do not remember exactly what Mr. Sanford said. It is an ordinary arbitration clause the union presents to all employers.

Q. And paragraph 12, was there a discussion on that? A. What is paragraph 12?

Q. "The agreement shall become effective from this date, and shall remain in effect for a period of one year and shall 313
continue in effect from year to year, unless either party desires to change or modify the same, when thirty days' notice to so change or modify shall be given by either party prior to the then date of expiration, such notice to be given in writing."

Was that discussed? A. Mr. Sanford gave the answer to that.

Q. What did he say? A. That he was not going to make any contract or agreement with the union, he would make it individually with his employees.

Q. You insisted, did you not, on a company union? [119] 314
A. Company union?

Q. I mean, on an independent union, on a contract with your union. I withdraw that question. Let us get it right. That, I know he did not do.

You insisted on a contract being made with your union, is not that right, Mr. Galvin? A. As the representatives of employees, yes.

Q. That was primarily what you were out to get, is not that true? A. No—

Q. Would you be satisfied if the company had made an agreement with a company union? A. Knowing that it was illegal, I would say no. 315

Q. Wait— A. No.

Q. You would not have been satisfied with it? A. You mean that I particularly would be satisfied individually?

Q. Yes, you were the boss there, were you not? A. Boss of what?

Q. The union; you were the boss for the Bakery & Confectionery Workers Union at that time. You were the president. A. I still am.

Q. You still are. Would you have been satisfied or would
316 you have agreed to an arrangement whereby Mr. Sanford would [120] make an agreement with a labor organization made up of his employees in the plant, otherwise known as a company union—would you have been satisfied with such an arrangement? Would you have consented to it on behalf of the workers? A. As I would not be a party to such an arrangement, there would be no reason why—whether I consent or not would have nothing to do with the case.

Q. Did you discuss company union up there at that time on the 29th of July? A. Insofar as the company had called
317 meetings of its employees on the premises during working hours, I did mention the company was making an effort to form a company union, yes.

Q. That you did not know, did you? A. That I did know.

Q. When you say the company was making an effort to form a company union, that is a very, very broad subject, is it not? A. Mr. Sanford had admitted he spoke to his employees and called meetings of his employees after he had received notice we were their collective bargaining agent.

He admitted he called such meetings, offered to give me a copy of some business he was supposed to have read off at the meeting. I refused to accept it because no one knew what he was reading, as compared to what he was saying or
318 [121] what was on the paper as compared to what he was saying. Mr. Healey got very angry when I said it was possible he ad libbed many things in his talk to the employees that were not on the printed sheet, he was supposed to have been reading to them.

Q. At any rate, at that time, Mr. Galvin, it is a fact, is it not, that there was not any company union at that plant and there were not any contracts with a company union

and there was not anything of the sort existing in this plant of the National Licorice Company at that time, namely, on or about July 28th? 319

Is not that the truth? A. No.

Q. Do you say there was a company union? A. I say there was an effort on the part of the company—

Q. Do you say there was a company union which the management recognized at that time, either orally or in writing? Do you say that, yes or no, if you know the answer? A. The management recognized such. The employees did not.

Q. Do you know what a company union is? A. Yes.

Q. What is it? A. An organization of employees fostered or financially backed or instigated or started or influenced or under the influence of the employer, himself. 320

[122] Q. Is that your definition of a company union? A. I do not know what the National Labor Relations Board—I do not know what the Act defines.

Q. Is that your definition? A. Do not stick me to a definition. It takes lawyers.

Trial Examiner Korey: Is that your impression of a company union?

The Witness: That is my impression, that is all.

Trial Examiner Korey: That is what the question is. 321

The Witness: Without sitting down to labor over the words and make a legalistic definition of my impression—

Q. (By Mr. Mann) In other words, when you talk of a company union, you have only in mind one that is formed at

the instance and instigation of the management, is not that right? A. Or under the influence of the management.

Q. Or under the influence of the management. Can you conceive of a company union existing which is formed at the instance of the workers, themselves? A. Honestly and definitely and deeply, no.

Q. You cannot? A. No.

Q. In other words, you mean to tell us here, as the president of your labor organization, an independent union, that you cannot conceive of any company union which is formed at [123] the instigation of the workers as against an independent union? A. I say that, qualifying it as I did, that if we get to the depth of the organization, we will always find some employer or agent of the company instigating the people who are supposedly starting an independent union in it.

Q. In other words, you presuppose every time that a company union is involved in any plant, that union has been instigated and fostered and initiated by the management? A. Is that material? I am wondering.

Trial Examiner Korey: The door has been opened to that phase of the question. We may as well go into it.

The Witness: Will you repeat the question?

Mr. Graham: May I ask when you refer to company union, you mean a union composed only of the employees of the employer?

Mr. Mann: That is right.

Mr. Graham: That is what your phase means?

Trial Examiner Korey: They both have a different conception of what the question is.

(The question was read by the reporter.)

Q. (By Mr. Mann) Is that your conception of a company union? A. If I may be allowed to qualify.

[124] Trial Examiner Korey: You may qualify.

A. I am trying to bring out in my own way what I understand the National Labor Relations Act says in very legalistic terms or plus my own experience.

Q. (By Mr. Mann) I am willing you should tell me your conception of the National Labor Relations Act. A. Plus my own experience—I believe that conception to my lawyers, plus my own experience in the movement—and I say that I understand—I honestly believe that any union that you have called a company union and which I agree with you there are some such things, that is a company union, may be fostered or is fostered, if we get to the real depth of the honest beginnings of such unions, we find that it is either fostered, influenced, or coerced or something of the sort, on the part of the company throughout its beginnings, and throughout its future life, for that matter.

Q. Then, according to your understanding of a company union, such a union would be an illegal labor organization under the Wagner Act, is not that true? A. If it came within the definition of the Wagner Act as a company union, it would be illegal, under the Act.

Q. It would be illegal—so that, according to your conception of a company union, being as you say that in every case in your opinion it is fostered, initiated and started by the management, and instigated by the management, it just [125] must be an illegal organization because it is not the voluntary act of the workers, is not that right? A. It is possible that is true, yes.

Q. Do you not know that the Wagner Act does not condemn company unions? A. I used the word "coercion" in my definition.

Q. You are presupposing every company union is a coercive organization? A. Yes, I do.

Q. Therefore, I ask you if that is the definition of a company union, according to your construction of it, then it would have to be condemned by the Wagner Act, is not that true? A. I do not know what the Wagner Act definitely, legalistically condemns.

Mr. Graham: I think we are getting rather far afield from the issues.

Mr. Mann: It is not far afield.

Mr. Graham: The knowledge of the witness as to the legal requirements of the Wagner Act really is not relevant to the case, is it?

Mr. Mann: We started it.

Q. (By Mr. Mann) Just two more questions. Do you not know the Wagner Act does not condemn company unions? Do you know that; yes or no?

[126] Trial Examiner Korey: If it condemns it, in your conception of the company union.

The Witness: If it condemns it in my conception of the company union?

Trial Examiner Korey: If it does not, answer accordingly.

Q. (By Mr. Mann) Let me ask you this: Do you not realize that a company union may be formed at the instigation of the workers, not at the instigation of the management.

and when it is formed in that way, then do you not admit that that is a bona fide legal labor organization, recognized by the Wagner Labor Act? 331

Mr. Graham: May I say for the benefit of the witness, when you say "company union," you mean simply a union that contains no one except employees of the company?

Mr. Mann: Only containing some of the employees of the company.

The Witness: That is not a company union in my conception, the way you are trying to bring it out.

Trial Examiner Korey: That is what I tried to bring out before. 332

The Witness: (Continued) What you are bringing out, calling a company union, is something entirely different. I may have a union which in and of itself is only in one company, but which may be affiliated with the American Federation [127] of Labor, the Committee for Industrial Organization, or any other independent group.

Q. (By Mr. Mann) But supposing it is not affiliated with any of those groups, is it condemned by the Wagner Act? A. I did not say so, no. I said the company union was, in my conception, condemned by it. 333

Q. We will come to that a little further, when we get a little further on in the case.

After you discussed your demands for an hour and a half, as you now say, and you listened to Mr. Sanford, and he listened to you, and whoever else was talking there, you went out, is that right? You left that afternoon, July 29th, did you not? A. Yes, we left the premises.

Q. All of you left together, is that right? A. Yes.

334 Q. That was yourself, Sklar, Bicariello, and Anderson? Am I right about the four men? A. Right.

Q. Before you left, Mr. Galvin, did you indicate that you were coming back for further discussion at some future time? A. We said something to Mr. Sanford to the effect that since he had said that he must have individual contracts with his employees and not make any agreement with the union, itself, and since he was trying to make us bring an offer to his employees, for him, to have them agree to that offer which they had already refused, we thought it would be better for him to think the thing over and let us

335 get together at some future date for a future conference, but there was no arrangement at that time for any future conference.

From my experience in breaking up of those negotiations in that way, I frankly did not believe from Mr. Sanford's attitude there would be any future conferences.

Q. Were you willing to negotiate further with Mr. Sanford even though he definitely told you that he would not sign a union contract? A. I always give the—

Q. Were you? A. Yes, I was.

Q. Did you indicate that to him? A. I indicated to him, yes, by telling him he should think it over and call us back

336 again at some time in some way or another.

Q. Did you say you would come back tomorrow? A. I told him I wanted a copy of his stenographer's notes and we would call him up about that.

Q. Did you call him up about that? A. I personally did not. My vice president, Anderson, called him up on Monday.

Q. What date was Monday? [129] A. August 2nd.

Q. Did you know what Mr. Sanford said to Mr. Anderson when he called him up on Monday, August 2nd, about the stenographer's notes? A. Anything I would say would be hearsay evidence.

Q. Hearsay is permitted here. A. No, I won't answer that question.

Q. You won't answer? A. No.

Mr. Graham: Mr. Anderson will be on the stand and there will be an opportunity—

Trial Examiner Korey: You object?

The Witness: I object to being required—I know what I have said and what I was present at.

Trial Examiner Korey: You prefer Mr. Anderson—

The Witness: —to give that testimony, because he is better qualified and I may make mistakes in trying to quote what he told me definitely was said.

Q. (By Mr. Mann) What time was it on August 2nd, which was on Monday, that Mr. Anderson called up Mr. Sanford and asked him about the stenographer's notes? A. I still would require Mr. Anderson to testify to that.

Q. Were you there when he called up? A. I was in Richmond, Virginia.

Q. I see. What day did you go to Richmond, Virginia? [130] A. I left either Saturday or Sunday night.

Q. July 30th or 31st? A. 30th or 31st, I think,—no, it would be July 31st or August 1st.

Q. August 1st was on Sunday, is that right? A. It seems that way, yes; that is right. I think I went either Saturday night or Sunday. I do not remember exactly.

Q. Whatever Anderson did here after you left that day,

August 1st, Sunday, or on Saturday, July 31st, was with your consent and approval, was it not? A. As an officer of the union, he is qualified and under the by-laws he has the authority to act in my behalf in my absence.

Q. In other words, you having left the city, some time prior to August 2nd, Anderson was, for all purposes as far as this case is concerned, taking your place, is not that right? A. Yes, he is the chief officer of the union in my absence.

Q. The answer to that is yes or no. A. Yes.

Q. When did you come back from Virginia? A. I think on August 11th. I think we would have our regular meeting of the month, which I made sure I was back for, by August 11th.

[131] Q. Were you in Virginia and Richmond during all of that period? A. During all of that period, I was in Richmond.

Q. Were you in touch with Mr. Anderson on the situation here in the plant of the National Licorice Company? A. By mail, by telegraph, and occasionally by telephone, I think once or twice during that period.

Q. Did Mr. Anderson—I withdraw that. Can you give us more accurately the date you left? A. I honestly cannot. I think it was either Saturday night—I was not definitely—I could prove I was not in the city, if necessary, on August 2nd or thereabouts. I have to make a report to the International Union of my expenses and therein—

Q. You were not here on August 2nd? Tell me, did you get a wire or telephone call or letter from Mr. Anderson addressed to you in Richmond, Virginia, on August 2nd? A. In reference to what?

Q. In reference to this, anything about the National Licorice Company. A. Yes, I was informed by wire, I think.

on August 2nd, that the employees of the National Licorice Company had gone on strike.

Q. Who—Anderson informed you to that effect? A. Yes.

[132] Q. At what time? A. Some time in the late afternoon or evening or something of that sort.

Q. August 2nd? A. Yes.

Q. Did you say you got a wire? A. Yes, a telegram.

Q. Have you got that telegram here? A. No, I have not.

Q. Is there a copy of it anywhere? A. Probably on the files of my union, unless such telegram was telephoned over—given to the telegraph company over the telephone, and if somebody forgot to ask them to make a copy of it.

Q. You see, Galvin, look—I asked you, is there a copy of it anywhere? A. I have to qualify; there may be.

Q. Will you look for it? A. Certainly.

Q. When will you look for it? A. How long is this going on? I will say—

Q. It will go on today and tomorrow, at least, maybe longer than that. A. If I get back to my office some time before midnight, I will try to see if it is on the files.

[133] Q. In connection with that, will you try to find out all copies of any letters or papers which Mr. Anderson sent to you from August 2nd on? A. Yes, I will do that.

Q. All right. You answered me and you said you got a wire that the employees went on strike. You mean that the union told the employees to go on strike? A. No.

Q. The union did not instruct the employees to strike on August 2nd? A. No.

Q. How did the strike occur? A. The employees told us they were absolutely fed up with the method of procedure of the company in trying to get them to accept terms they did not want to do without the union, and not to go to out-

side source, and sending the superintendent of the plant, and other people, around talking to them about it, and continuously annoying them about it.

They felt the company was stalling and they just stopped work.

Q. Well, but you were at that time the designated representative of these workers for collective bargaining purposes, were you not? A. True.

Q. As late as July 29th, which was a Thursday, you had been in the office of Mr.—was it Thursday? [134] A. Friday, I think, probably Thursday. I am just looking. Yes, it was Thursday.

Q. Thursday—that was the Thursday that you and Bicarielio and Anderson and Sklar left there in the afternoon, not having arrived at any agreement in this discussion, and you waited to hear from the National Licorice Company, and I think it is fair to say that the National Licorice were probably waiting to hear from you.

Was not that your impression after you left there on July 29th? A. As you remember, I gave my honest impression to be that I would never hear from Mr. Sanford again, or something to that effect.

Q. That you would never hear from him again? A. In my experience in negotiations, a man using that attitude, did not intend to call us up at any other time in the future for further negotiations.

Q. Did you tell Mr.—did you threaten Sanford if there was not some agreement arrived at there would be a strike? Did you tell him that on July 29th? A. I never threaten any employer.

Q. Leave out the word "threaten." Did you say that to him.

talk about strike at all? A. I possibly said his employees would not be satisfied to continue waiting and waiting for him to carry on long and [135] lengthy negotiations, and it was very difficult for a union to keep such employees in line, if they feel honestly the company is not dealing with the union in good faith.

Q. Well, when you say it is difficult for the union to keep the employees in line, you also mean to tell us, do you not, that the employees in a situation like that are guided by what the union tells them especially? A. We hope they are guided by what the union tells them, yes.

Q. Do you mean to tell the Examiner you did not have control of these employees on July 29th, in view of the fact that you said last night that you represented probably over 90 per cent of these employees on that day? A. I told you why the employees struck.

Q. Did you say you had nothing to do with that strike? A. I did not call the strike, the union did not call the strike. The employees, themselves, struck. The union supported them after they struck.

Q. The union what? A. Supported their efforts after the strike.

Q. Does the union ever call a strike? A. Yes.

Q. How is a strike called in your union? A. Usually by a vote of the people in the shop affected.

Q. How is that vote taken? [136] A. Usually at a meeting.

Q. At a meeting? A. If the strike is called definitely by the union executives.

Q. Was there a meeting of these workers? A. Many meetings of them.

Q. No, was there a meeting prior to August 2nd or on

August 2nd of these workers in the union? A. I am not so sure. I think there was a meeting on July 29th or the
352 Saturday previous to Monday.

Q. Is there a record of this any place? A. I would not be sure. I must say for the record, counsellor, you are speaking to a person who is not in any way intending to brag, who has been through about five or six different strike situations since this time, and has been with several employers.

Q. I know you have. A. (Continued) And addressed countless meetings, so for me to remember, I would have to have the record of the Brooklyn headquarters to say we
353 exactly had a meeting, but, perhaps I am wrong, probably did not have a meeting from July 29th to August 2nd of the employees.

Q. Will you just tell us, Mr. Galvin, under the by-laws of this union—I assume you were referring to the by-laws because you would not do anything outside of the by-laws, I am [137] sure of that,—but there is a provision in your by-laws as to how a strike is called, is there not? A. Yes, there is a provision.

Q. What does it say about how a strike is called? A. I will read it to you.

Q. All right. A. I do not want it in the record. I do not
354 want to leave this in evidence. I must be permitted to read the full article so you will—

Q. Do you not know it without even reading it? A. Yes, because it is—

Trial Examiner Korey: Just your impression.

A. The impression is in order to have a strike called by the union itself, not saying strikes may be called by the em-

ployees and later backed by it in order that the strike called by the union itself must be called at a meeting, must 355
be a meeting, must be a vote, must be three-quarters vote. Or, it says after that that nothing in this article is to be construed to in any way abbreviate or abridge the authority of the president or the delegates to in any way instruct the members in any case of an emergency.

So under that construction even the president would not call a strike or stoppage without a vote of the union, but such was not done in the National Licorice Case, that is as I told you. The employees themselves, being fed up with the [138] attitude of the company, struck.

Q. (By Mr. Mann) How was that done? Was there a 356
meeting? They did not spontaneously strike, did they? A. They were told by their committees.

Q. How was it done, if you know? A. As far as I know, and again it must be hearsay evidence, they were fed up with the company's attitude and decided they would not wait any longer for the company, whether the company was going to call us up or not, they did not know, they were just fed up.

We had been, say, about two or three weeks in trying to get the company to come to an agreement, so they were fed up.

Q. Mr. Galvin, you were in Virginia at that time? A. 357
That is right. I said hearsay evidence.

Q. The man who knows all about what happened is Mr. Anderson? A. I said, frankly, that it was hearsay evidence. I keep repeating—

Q. Did Mr. Anderson inform you in Virginia how this strike occurred? A. I think he told me over the telephone some night after that.

Q. How about the telegram he sent you on August 2nd?
A. As I said, that frankly said something to the effect [139] they were on strike, that is all.

Q. They were on strike, and you want to tell the Examiner that there is no record that you can produce here showing a meeting of the workers, showing a meeting of the union or anything which indicates how this thing occurred on August 2nd? A. I told you frankly every time and I am still saying it, the employees called the strike themselves, or the stoppage themselves, and though we sympathized with them 100 per cent, thereafter, and fought for them to see that their strike would be a successful one, it was not an official strike of the union, such as the Rockwood strike and others that have been called by the union.

Q. How do you designate an official strike by the union? What proof have you got of any official strike by the union in your records? A. Well, I do not have any proof here, but—

Q. Is there proof any place? A. We have the Rockwood Company strike—not intending to bring any other company into the record here, which was called at a meeting of its employees who, in a different attitude—the same attitude, rather, of the National Licorice employees, were fed up with the long drawn out discussions and so on and so forth, and insisted the union call a strike. That was, in fact, the day after I returned [140] from Virginia the night of the 12th, as I remember.

We had a meeting of Rockwood employees and they voted unanimously to strike in the Rockwood Company, and that is the following day after our going in, the company refused to talk to us.

Q. Did the voters in the National Licorice Company vote to strike? A. I said, no. 361

Q. There was no vote? A. No vote.

Q. Were they instructed by anybody in your union to strike? A. Absolutely not.

Q. Did Mr. Anderson tell them to strike? A. Absolutely not.

Q. Did you tell them not to strike? A. Told them at one previous date they should wait until we told them to strike.

Q. What date did you tell them that? A. At any meeting at which I speak to employees, I tell them that particular thing.

Q. Did you speak to the employees of the National Licorice 362 Company? A. Several times.

Q. When, give me the dates? A. Again, I must beg that I cannot pick out the employees [141] of National Licorice and say other than such things as this, that on such and such a date exactly I spoke to them. I spoke to them after the strike was called, before the strike several times. Please, Counsellor, do not try to stick me to dates.

Trial Examiner Korey: Give us approximately, the week or two weeks before?

The Witness: I know previous to the presentation of the contract we had a meeting in Brooklyn at 363 which we discussed the possibilities and demands to be presented to the company.

Q. (By Mr. Mann) You mean, prior to July 29th? A. No, no, prior to the submission of demands which were submitted on July 19th.

Q. July 19th did you speak to them, address the workers after July 19th? A. I think I did, yes.

Q. What date, if you know? A. I would not be sure as
64 to the dates.

Q. Did you speak to them between July 19th and July 22nd? A. I just tell you I spoke to them between the 19th and 29th. As to the dates, I do not know.

Q. How many times between July 19th and July 29th? A. Certainly once, maybe twice.

Q. Where? [142] A. Usually at Lenruth Hall, Myrtle Avenue, Brooklyn.

Q. Do you hire that hall? A. Yes.

Q. By the meeting? A. By the meeting, when we require it, we go over there and hire it.

65 Q. What is that address, please? A. Myrtle Avenue and Waverly Avenue, Brooklyn.

Q. Now, you say you addressed them once and possibly twice between July 19th and July 29th? A. Yes.

Q. You are sure of that? A. I feel sure, yes.

Q. How many workers were there on those occasions? A. Again, please, I must—

Q. About. A. I could not say from memory.

Q. You do not know? A. No.

Q. Do you make a record of the workers when they come in? A. We make a loose count of the number present.

Q. What do you call a loose count? A. An approxima-
66 tion of those there, have an idea if there is a majority present or otherwise.

Q. Is that put down in any book? [143] A. No.

Q. Put down on a piece of paper? A. No.

Q. So you would not know whether five workers were at that meeting or 55 or 105, would you, from any definite record, I mean, that you could refer to now? A. It is possible some of my other executives have a record, some of the organizers have a record.

Q. I have asked you, is there a record kept? A. I have not the record, no. 367

Q. Is there a record kept? A. I would not know.

Q. You would not know, as president of the union? A. All I would know, I would be assured by my organizers there was more than a majority, or close to it.

Q. You would not know as president of the union whether any records are kept on important things like meetings of workers in different plants, especially prior to the calling of strikes? A. I presume such records are kept.

Q. Is that the best answer you can give? A. Yes, sir.

Q. Is there anything in the by-laws about keeping records? A. Of organization meetings? 368

Q. Yes. [144] A. No.

Q. Did you address the workers on July 29th in Lenruth Hall, or any other place? A. As I said, I think there was a meeting.

Q. Did you, yes or no? A. If there was no meeting—

Q. Did you, yes or no? The answer is either yes or no, or I do not remember. A. I beg counsel not to stick me to exactly what workers on what day I spoke to, because it is practically impossible. If there was a meeting of those employees, I spoke to them, that is all I can say.

Q. On which day? A. The date you suggested, whatever it is. 369

Q. July 29th? A. If there was a meeting, I spoke to them.

Q. Was there a meeting?

Mr. Graham: The witness already answered that.

A. I did not think so.

Q. (By Mr. Mann) After all, we are talking to an intelligent man, the president of the union. I want to exhaust

every question about this, because I think it is very important. A. I already said I do not think so. I do not think there was a meeting.

370 [145] Q. Was there a meeting on July 30th? A. No.

Q. Was there a meeting on July 31st? A. No.

Q. On August 1st? A. No. I say the 31st and August 1st I must say from hearsay. I do not think there was a meeting.

Q. Which one is Mr. Anderson? A. The last man on the left.

Q. Do you know whether Mr. Anderson addressed the meeting on July 29th, 30th, 31st, or August 1st? A. Mr. Anderson is better qualified—

371 Q. Do you know? A. No, I do not know.

Q. Do you know that this started as a sit-down strike, do you know that? A. What do you mean by a sit-down strike?

Q. You know what I mean by a sit-down strike? A. No.

Q. Everybody knows that, especially the president of a union. A. I am sorry, all I know—

Q. You do not know what that means? A. All I know about the strike is that the boys stopped work—

[146] Q. Mr. Galvin, do you know this started as a sit-down strike? A. I object to the word "sit-down" because of its connotation as something like taking over the plant, and so on and so forth, and the employees did not do that.

372 Q. How do you know they did not do that? A. You asked me do I know. You are still asking me to bring in hearsay evidence every time you ask me about August 2nd. If you continue to ask questions like that, I will have to answer them with hearsay evidence every time.

Q. Why do you object, if I do not? A. All right; I will answer.

Trial Examiner Korey: If he asks you, answer.

373 A. (Continued) All right; as I understand it, they stopped work and went down to one department, the shipping department or something, and there were locked in by the company's managers or foremen so they could not go one place or another for some period of time.

They were locked in there in that one department by the company, itself.

Q. (By Mr. Mann) Who told you that? A. My detective of my union and employees of the company.

Q. Give me the names of the people that told you that? A. As I remember, one organizer, James Landriscine. 374

Q. Is he in court? [147] A. Yes; Nicholas Andretti, an employee of the company.

Q. Is he in court? A. He just stepped out. James Blasi.

Trial Examiner Korey: Who is he?

A. An employee of the company. There are others, who, I think, corroborated that statement, but are not present here today.

Q. (By Mr. Mann) Those persons you mentioned and whom you have identified as being present in court, are the three men who told you that they were locked in? A. No, one 375 is an organizer who told me of it.

Q. What is his name? A. James Landriscine. The other two were employees that I understand were locked in.

Q. The organizer, of course, was not there, was he? A. No, he only heard by telephone.

Q. The employees probably were there? A. That is true, they were there after the thing started, but not there at the time.

Q. Out of the entire force of 135 workers, you are able to name two employees who told you that, is that right? A. Of course, you asked me definitely. I can only remember two names, the names of those two. I know of others that were present and agreed to that, but I would not know their names. Somebody else would have to get it.

[148] Q. Do you know what time the sit-down strike occurred on August 2nd, do you know that? A. The approximate—approximately noontime.

Q. Who told you that? A. As far as I know, James Landriscine was the one who told me of it. I always object to the word "sit-down."

Trial Examiner Korey: All right, use your own. What do you say it is, a lock-in strike?

The Witness: Stoppage and lock-in by the employer, up until something like 4:30.

Q. (By Mr. Mann) Stoppage is your synonym for sit-down? A. No.

Q. What is your synonym for "sit-down"? A. I have no synonym for "sit-down".

Q. When you are referring to a situation where workers took possession of a plant and refused to get out of the plant and kept upon the property of the management, what do you call that, Mr. Galvin? A. I have not referred to—

Q. I am not talking about here. That is a situation. How do you describe that in two or three words? What kind of a strike do you call that? A. On your simple language, I could not call it anything.

Q. You would not call that a sit-down strike, would you? A. I do not know what you would call it.

[149] Q. Have you seen that word used time and time again in the newspapers and in the press? A. I cannot be expected to understand that.

Q. Have you seen it? A. I have seen it used.

Q. Do you know what it means? A. In every situation it has been used, it has meant something different, sometimes, than it does in others. Newspaper—

Trial Examiner Korey: Can you answer the question?

The Witness: What is it?

Trial Examiner Korey: Whatever the question was, regarding sit-down strikes.

The Witness: He asked me do I know what it means. I say in each situation the newspaper reporter uses it, it might be different.

Trial Examiner Korey: If you cannot answer, say you cannot answer.

The Witness: I cannot tell what a reporter might mean by using the word "sit-down."

(There was a discussion off the record.)

Q. (By Mr. Mann) How long did this strike last, do you know? A. It is still on.

Q. You think it is still on? [150] A. Yes.

Q. Do you not know 100 per cent of the employees are back to work? A. No.

Q. What do you mean by that answer? A. 100 per cent of the employees are not back to work.

Q. How many are not back? A. Definitely, I do not know. I know of two that are not back.

Q. Outside of those two, do you not know all the rest are back at work? A. No, I do not know.

Q. Do you deny that that is the fact? A. I do not deny it, I say I do not know it is a fact.

Q. You know the plant has been operating since August 25, do you not? Do you know it, yes or no? A. Yes.

Q. You just answered me. You said the strike is still on. Who determines that strike is still on? A. Even though a plant—

Q. Who determines that? A. The union does.

Q. The union does? You just said before the union did not call the strike? A. True.

[151] Q. Yet you determine that the strike is still on? A. We have taken up, yes, it is true, yes.

Q. In other words, you said here a moment ago to the Examiner that the workers went out on strike without the union calling a strike, is that your answer? A. I qualified that.

Q. No, you did not. A. Yes, I did. I said they went out on strike, but the union took up the cudgels and carried the strike on from that time.

Q. What do you mean by "carried the strike on"? A. Paid for pickets' signs, put pickets out on the place, maintained strike headquarters, helped some of the employees financially, that we could, generally brought the name of the National Licorice Company before the unions of the country as being unfair to union labor.

Q. That is what you call backing the strike? A. Right.

Q. Did you pay the employees a penny of money while they were on strike? A. We paid for food, gave some carfare, aided some we could, since the employees had become members of our union.

Q. What employees did you pay money for food?

385

Trial Examiner Korey: You do not have to answer.

Q. (By Mr. Mann) What workers did you pay money for carfare? [152] A. Every worker that needed, asked or requested, it was never denied.

Q. Have you a record of what you paid to the workers of the National Licorice Company? A. Paid; what do you mean?

Q. You said you paid money to the strikers? A. The organizer or the one taking care of the strike makes notes of the amount of money he spends for such things, and I do not think he puts down exactly Mary and Johnny and Jimmy 5 cents, 10 cents, or 15 cents, or anything of that sort. 386

Mr. Graham: At this point I am going to object to further pursuit of this subject of exact individuals who received benefits.

Q. (By Mr. Mann) Were there any individuals who received strike benefits? A. You cannot have strike benefits until you have been a member of the organization for six months, under the constitution of the International Union, strike benefits—you mean, I suppose, money payments directly and absolutely and continuously, and by absolute written law of the union that cannot be done unless the person is a member of the International for six months. 387

Q. So nobody here got any strike benefits because they [153] were not members for that period of time? A. If you use the words "strike benefits" to mean that, they were paid and assisted in other ways.

Q. So these workers who were out on strike from August

2nd until the latter part of August, being almost five weeks,
388 did not get a penny from your union during the time they were losing wages? A. I did not say that.

Q. I mean,—I do not mean carfare. I mean, something substantial in line with their salaries that they were losing by the strike? A. I still do not know what you mean by substantial. We helped them when we could. That is what I said.

Trial Examiner Korey: All right.

Q. (By Mr. Mann) If all the employees go back to work
389 in a situation as you say here, the union did not call the strike, do you not consider that the strike is over when the workers go back to work? A. What we consider is not a matter of record for this Board.

Mr. Graham: That is hypothetical.

Q. (By Mr. Mann) In this particular case? A. In this particular case, the strike is still on.

Q. Though all the workers are back to work and nobody wants to strike any more? [154] A. I did not say all workers were back.

Q. With the exception of two? A. Two, to my knowledge.
390 Q. Give me the names of those two that are not back? A. That I know definitely are not back, ones I named before, Nicholas Andretti and James Blasi.

Mr. Mann: Will you stand up, you two fellows?

(Mr. Andretti and Mr. Blasi arose.)

Q. (By Mr. Mann) Those are the two that are not back, that are not taken back? A. The ones I know. 391

Q. They were not taken back? Did they apply for work? A. They were told by somebody they would not be taken back.

Q. Do you know whether they applied to be reinstated?

Mr. Graham: I object to going into that issue at this time. It is more properly a matter of later development of the case and will be gone into thoroughly in the hearing.

The Witness: Why should I be put on hearsay evidence all the way through here? 392

Q. (By Mr. Mann) If those two men went back to work today, would you still say the strike is on? A. I do not know what I would say. That is up to my executive board.

Q. You are the president of a union? [155] A. I have an executive board.

Q. What did you say? A. I have an executive board.

Q. Do you know what they would say? A. No.

Q. What would you vote? A. What would I vote?

Mr. Graham: It calls for a conclusion.

Trial Examiner Korey: I will sustain it.

Mr. Graham: I object to this whole line of cross examination. 393

Mr. Mann: All right.

Q. (By Mr. Mann) You say that these workers were members of your union? A. They designated my union.

Q. I asked you that question. A. No one is definitely a member of my union until they pay initiation fees.

Q. You know, as a fact, not one man here of all the
394 employees of the National Licorice Company, paid any initiation fee? A. We refused their initiation fees.

Q. I did not ask— A. You imply we could not get it. I am telling you we refused their initiation fees.

[156] Q. Is not that the way you get members, by initiation fee? A. Not always. They become members by initiation fee.

Q. So until they become members by initiation fee, they are really not members, is not that right? A. True, in the true sense of the word.

Q. So far as these workers are concerned, there is not one
395 that you would not classify as a member of your union, is not that true? A. We are their collective bargaining agency.

Q. As a member of your union, not one of the employees of the National Licorice Company from whom you obtained application cards is a member of your union, according to your own statement, is not that true? A. In the true sense—qualifying it as I did, yes.

Q. (By Trial Examiner Korey) Why did not the union want to take initiation fees? A. Is this off the record?

Q. No. A. The reason the union did not take initiation fees from the National Licorice Employees or Rockwood or several others—

396

Mr. Mann: We do not care about Rockwood.

The Witness: This National Licorice, in the knowledge of the International Union and the personal knowledge of myself; for some seven years there has been a man in the [157] name of the labor movement, going around organizing candy workers, who has accepted initiation fees of $2 from these people and

giving them an excuse that he was going to wait until he had the whole field organized before he could do anything with any individual employer. 397

He took the money from these people and then continued through each season for months, taking money and never definitely did anything for them.

These people were poisoned by that man's attitude, and his work, and we decided as a procedure to prove our honesty and legitimacy as a labor union, that we would accept the responsibility of being their collective bargaining agency without taking any initiation fee until such time as we did come to some agreement with the company, and I do not say a signed 398 contract with the company.

I say some agreement with the company, regarding wages, hours, and working conditions of its employees. At that time we would take initiation fees, etc. Thereafter—

Trial Examiner Korey: All right.

Q. (By Mr. Mann) That is your explanation of why you did not take initiation fees from the workers of the National Licorice? A. That is my honest—

Q. I do not say it is dishonest. I say it is your explanation? [158] A. True. 399

Q. For the same reasons you did not take any dues? A. Same reason, true.

Q. When a person is a member, though, in your association, your labor organization, he gets a card, does he not, identifying him as a member? A. Or a button, a book and usually a working card.

Q. That book and the working card is evidence of member-

ship in the union, is that right? A. It is evidence of payments as a member of the union, yes, sir.

Q. You have a record, I assume, in your organization, a book or several books where you keep a list of dues-paying members, is not that true? A. That is true.

Q. Therefore, when workers in a plant are not members of the union, under the theory of membership as you have just stated it, you have no hold on them, is not that right? A. I do not know what you mean by the word "hold".

Q. Membership is governed by by-laws and constitution, is it not? A. True.

Q. When a man becomes a member, he subscribes to the by-laws and constitution, but when he is not a member he does not have to bother with that, is that not right? [159] A. No, it is not right.

Q. It is not right? A. Because the application definitely says, "Pending my acceptance as a member of this union and thereafter, I hereby designate the Bakery & Confectionery Workers International Union of America as my collective bargaining agency," etc.

(There was discussion off the record.)

Q. (By Mr. Mann) One more question—that designation, have you got one of those cards?

Mr. Graham: I will produce the cards and offer them in evidence and all the rest when I get a witness on who can identify them.

Mr. Mann: If we can get one in now, I would ask him this one question, a blank one, I do not care.

The Witness: I will give him a blank one. It is

not a card, it is a full, life history of every person who signs this.

(There was discussion off the record.)

Q. (By Mr. Mann) Just one other question. Do you remember that when this conference of July 29th was offered, Mr. Sanford said to you, "Bring in something that we can consider on your demands, and we cannot consider the demands that you have brought in."

And you then say, "You asked us to come closer to the [160] 5 per cent," and Sanford said, "I have made you our best offer. I will await your new proposition, if you want to bring it in."

Do you remember Sanford saying that at the concluding statement, "I will await your new proposition if you will bring it on"? A. No, the concluding statement, as I remember, was we asked him, he should think over the situation more clearly because he was not—in his talk to us he had not recognized us as the collective bargaining agency, even though he told the board the day before he would—that he wanted us to just act as his agent, more or less, to talk to his employees, and that he should think it over and if he should come to another conclusion, to call us up and try to arrange another meeting.

Q. Do you not remember him saying as a final word, "I have made you our best offer. I will await your new proposition, if you want to bring it in"? A. He may have said something about "I have made you our best offer," but he never said anything I remember about a new proposition.

Q. Did you not say you would come back and see whether or not you could not come to some agreement with him? A. No.

Q. Did you definitely say you would not come back? [161]
06. A. No, I asked him that he should think this situation over, himself, regarding recognizing the union as the bargaining agency and the other terms of the contract, and try to come to some other opinions in the matter and call us up.

Q. As far as you are concerned, Mr. Galvin, when you went out of there on the 29th day of July, at 4:30 in the afternoon, that was the last time that you saw Mr. Sanford or telephoned to him up to the time that you came back from Virginia, and possibly up to the time you came in here yesterday, isn't that right? A. No.

Q. When did you see him? A. After I came back from
07 Virginia, I spoke to Mr. Sanford over the telephone.

Q. On what date? A. I do not know the exact date, but the day after or the day I came back, I asked him something to the effect why we don't get together and see if we cannot settle this whole situation.

Q. That is while the strike was on? A. While the strike was on.

Q. What did he say? A. As I remember it, he said something about a letter he sent and that he had nothing to say, nothing to say, nothing to say, nothing to say.

[162] Q. He said something about a letter he sent? A. I think so, that he had nothing to say to me. He said he
08 would not need me, etc.

Mr. Mann: I think that is all.

Trial Examiner Korey: We will have a five minute recess at this time.

(Whereupon a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Korey: Are we ready to proceed, Mr. Graham? 409

Mr. Graham: Yes.

Redirect Examination:

Q. (By Mr. Graham) Mr. Galvin, what is the unit which your organization contends is the appropriate unit for collective bargaining in this plant? What employees are included in that unit and which are excluded? A. I would say all employees would be included with the exception of the executive employees, office workers, salesmen, and if they have any truck drivers, those outside employees. 410

In effect, we would limit our jurisdiction as such to inside employees as much as possible, working foremen would come under that basis as being in our jurisdiction, but strictly supervision, such as the superintendent of the plant and the executive staff and the office employees we [163] would not think were in our jurisdiction there.

Q. Working foremen who have the right to hire or fire, if there be any such, would not be included, but working foremen who had no such right and were not actually supervisory employees would be included? A. It is hard to say, in my experience, Mr. Graham, when a person has a right to hire and fire, he may have a right to recommend such and not have the actual right to do so. 411

Trial Examiner Korey: Would you even under such circumstances consider him an eligible member, where he makes only recommendations?

The Witness: I say generally working foremen, if they have to work around with the employees, are not strictly supervisory.

We require they be members of our union in union
12 shops for the simple reason to eliminate friction of their supposedly doing union employees' work.

We eliminate friction that way.

Q. (By Mr. Graham) So you would include foremen in this plant to the extent to which those foremen actually work with the employees and exclude foremen to the extent to which those foremen are actually in a supervisory capacity, and do not do the work of the employees, with the employees? A. Yes.

13 Trial Examiner Korey: When you say all employees, you [164] mean all production employees, is that right?

A. All employees, except the ones I mentioned.

Q. (By Mr. Graham) Do the production employees on the inside, to whom you referred, employees who are engaged in the receiving of the goods, in the manufacture of the candy, in the packaging of that candy, and shipments of packaged candy? A. That includes those four classifications, plus anybody who has to maintain the plant, such as maintain and manage the power plant, the fireman in the cellar, etc.

14 Q. Yes. In your cross examination you stated that the 14th of July was the first time that you communicated with the company. I would like to ask you whether you know whether any previous communication was had by the union or whether this statement of yours was meant to apply only to your own communication? A. I mean that is the only official communication with the company, though I know my organizers were there outside of the plant in the morn-

ings previous to that time, meeting with employees on their way to work.

415

Mr. Mann: I object to that. He was not asked that. Mr. Graham asked him about official communications between—

The Witness: I said, no.

Trial Examiner Korey: The answer is no.

A. (Continued) No other official communication previous to [165] that date.

Q. (By Mr. Graham) Between you and the company or between any officer of the union and the company? A. Well, I cannot definitely say that because it is possible some organizer may have spoken to some official of the company indirectly in his efforts to organize the plant or being around the plant there. By that I mean the superintendent or somebody may have come around and said, "What are you doing around here?" or something, and he may have communicated his business at that very moment, officially to the company in that way.

416

I would not say. It may not have happened in this way.

Q. That is just what I want to develop, the fact your statement is limited to official acts which you are connected with. A. That is true.

417

Q. And goes no further? A. True.

Q. Reference has been made to a contract which was given by the union to the company. Do you know in what way the union is referred to in that contract? Is it referred to as Bakery & Confectionery Workers or as— A. We have a copy here.

Q. (Continued)—or— A. It is Bakery & Confectionery Workers, I think.

[166] Q. As developed, your card contains also that designation, "Bakery & Confectionery"— A. Yes, our local is a subordinate of the Bakery & Confectionery Workers International Union of America. It is obvious on the card and obvious in the proposed agreement we have presented to the company.

Q. In the telegram which you sent on the 14th of July, an issue has been raised as to whether or not you stated that you were the representatives of a majority of the workers.

In this telegram you state that the union represents the employees of the National Licorice Company as their sole collective bargaining agency.

Was it clear to you at the time you sent that telegram that that could mean nothing but that the fact that the union had become the sole collective bargaining agency because it had been designated by a majority of the employees?

Mr. Mann: I object to that, what was clear to him. It is a question, was it clear to us? After all, that is plain English and it is for the Examiner to construe the meaning of that.

Trial Examiner Korey: Reframe your question, Mr. Graham.

Q. (By Mr. Graham) Are you familiar with the requirements [167] of the National Labor Relations Board, or the National Labor Relations Act, insofar as they apply to the question of who shall be the exclusive bargaining agent of employees? A. As I understand it, if you have a majority of the employees of the company, you become legally the sole collective bargaining agency for that company.

Trial Examiner Korey: For the employees of that company.

421

The Witness: The employees of that company.

Q. (By Mr. Graham) Is that why you adopted the phraseology which you used in your telegram? A. True.

Mr. Mann: What is your question—that is why?

Q. (By Mr. Graham) Is that the reason why this phraseology was used in the telegram? A. Yes.

Mr. Mann: I do not follow that.

422

Mr. Graham: It was brought out during the cross examination that the complaint, paragraph 4, thereafter states that on or about the 28th of July a majority of the employees designated the union as their representative. What occurred on the 28th of July, was there a conference held on that day?

A. On that day, as I remember it, that was the day that Mr. McCann of the Board requested that we have representa- [168] tives, the union have representatives at a conference he was holding in the Board's offices, and at which he expected—well, I do not know if he said in his letter he expected representatives of the company, but we thought they would be there and went to that conference.

423

It was in the afternoon, if I remember rightly. It may have been in the morning.

We had the conference in which Mr. Sanford and Mr. Healey were representing the company and Mr. Sklar and myself represented the union.

Q. At that time did the union bring to the attention of Mr. McCann the fact that the union had application cards of more than a majority of the workers? A. We had brought it previously to Mr. McCann's attention and brought it—spoke of it again at that time and the company conceded to Mr. McCann they would bargain collectively for their employees with us.

Q. At that time, at that conference, were the cards shown to Mr. McCann? A. Not at that conference, no. We offered again to show them, I think, there, and again it was brushed aside by Mr. Sanford and it was unnecessary.

He was going to see us the next day and bargain collectively with us.

Q. Do you recall on what previous occasion the cards were [169] shown to a representative of the Board? A. I would not know exactly, but some time after we—it seems to me, as I remember it, we asked for an election or something, as of July 19th, and it seems to be the Board's procedure in the cases that I have been in that if we can prove to the Board's representative that we have more than a majority of the employees, by applications or otherwise, they usually discourage an election as being unnecessary, because we have absolute proof of our contention that we have more than a majority of the employees, we represent more than a majority of the employees.

Q. The day which was chosen for mention in the complaint could, in your own opinion, have been legitimately chosen by virtue of the fact on that day there was a conference at which the strength of the union and the plant was demonstrated to an agent of the Board? A. It is possible we showed them the applications, to Mr. McCann, on that day, previous to Mr. Healey and Mr. Sanford's arrival. In fact,

they were sitting outside for some length of time and no one knew they were out there, while we were still waiting for them so to speak. 427

Q. Do you recall whether or not in that conference Mr. McCann asked Mr. Sanford to put in writing his agreement to bargain with the union? A. Yes, he definitely asked Mr. Sanford to put in writing [170] his agreement before that Board to bargain collectively with our union, and Mr. Sanford answered that he could not do that because some member of his board of directors was in Norway, or something of that sort, and he would have to have his board of directors together before he could make any written agreements. 428

In the conference which was held in the plant on the 19th of July, as has been testified, the cards, the application cards, were brought by one of the union representatives and the union offered to show the cards to Mr. Sanford? A. That is right.

Q. Why were not the cards shown to Mr. Sanford at the first time at which they were offered? A. Mr. Sanford at that time questioned whether we represented a majority. I said, "I can prove to you we do. We have applications here. Mr. Bicariello has them in his bag."

I mean, in substance. I am not quoting myself verbatim.

Q. Yes. A. That we have the applications here to prove it and you can see the signatures of your employees. He said, "I would not know whether they signed them." "Why do you not have a record of people signing their pay checks here?" He said, "No, we do not use that method." I am saying that —I do not know whether he does use it, but he said he did not use [171] that method. I said, "There will be some other way of your checking it up. We will give you the applications, go over the applications here with you." 429

He said, "It does not make any difference, anyhow." I said, "Well, we will give them to you and let you look over
30 them, if, when you go over them, you will grant before this time we start looking over them, that if we prove to you definitely we have a majority of the employees, you will bargain collectively with us for those employees."

He said, "No," he would not do anything like that, would not make any difference, he still would not bargain with us, and so forth.

He said he would not bargain with us, even though we could prove by these applications that we had the majority, we refused to then jeopardize even the names of the majority
31 by handing them to him to use for his own purposes of intimidation, whatever he might have done. We told him so at the time.

Q. Then the refusal which was later made to show Mr. Sanford the cards was because Mr. Sanford had stated previously he would not agree to bargain with the union as the exclusive representative of the workers, even though the cards showed a majority? A. True.

Q. At that same conference or at that same meeting, towards [172] the end of the meeting, it has been testified that Mr. Sanford referred to a possible 5 per cent increase in wages, and possibly one week's vacation with pay.

32 Did he refer also to a question of time and a half for overtime, or do you recall that? A. You are mixing the conferences, Counsellor. In the conference in which that was discussed at all—it was July 29th. If you want it as an answer to that date—

Q. No, do not answer as to that date. A. On that date Mr. Sanford took the proposed agreement and threw it over his shoulder to a desk, and did not discuss the agreement at all.

Q. At the meeting which was held on the 29th of July in the plant, did Mr. Sanford ever state that he would recognize the union as the exclusive representative of the workers, if the union could prove that it had been designated by a majority of those workers as the appropriate bargaining agency? 433

Mr. Mann: I object to that question,—

A. No.

Mr. Mann: —because it contains the mysterious phrase, "Recognize the union." For two years I have been trying to find out exactly what that means. 434

Trial Examiner Korey: Will you reframe your question?

Q. (By Mr. Graham) In the conference on the 29th of July, [173] did Mr. Sanford state that he would refuse to bargain with the union as the exclusive representative of the employees, even if it were established that the union had been designated by a majority of the employees as their representative? A. In substance, he did so refuse to bargain.

Q. To what extent did Mr. Sanford say he would recognize the union? A. As I expressed before, he would talk to the union representatives there, and ask them to bring whatever terms he offered or whatever terms the union representatives might agree to bring, to the employees as his agent, as I look at it. 435

We would be his agent to go to see his employees and then when the employees would agree to said terms, the employees themselves would sign individual agreements with the company.

There would be no agreement with the union itself.

Q. And did Mr. Sanford further limit this recognition or further limit this offer of dealing with the union to dealing with the union as to only the members of the employees who had signed application cards and not as to other employees? A. In that statement, he read off, he said that, in substance.

[174] Q. You were asked on cross examination whether or not you offered to discuss the question of the wages which should be made applicable in the plant.

Did Mr. Sanford offer to discuss a compromise between the 5 per cent increase previously offered to employees and the demand of the union? A. No, he just said the demand of the union was preposterous, that we did not know what the business was like, and other words to that effect, but did not make any offer to further compromise between 5 per cent and the demands of the union.

Q. Did the union at that time indicate its willingness to discuss the contract in respect to the question of wages? A. Yes.

Q. In this conference on the 29th of July, will you describe in just a few words, first what happened,—in just a brief way, before the representatives of the union went into the office, then what happened during the first part of the time when they were in the office and, lastly, the conclusion of that conference, just generally, just very briefly? A. Anything that happened before, I do not think would mean anything other than we just presented ourselves outside to the telephone operator there and mentioned who we were and I do not know who it was who came to meet us, but [175] we went into the room where Mr. Sanford and Mr. Healey and Mr. Smlley were present.

Q. I was referring to the survey of the plant, itself. A. Oh, we did not have any survey of the plant. During the time 439
we were there, Mr. Sanford or somebody brought out something about "All Sorts," I think is the name of a variety of licorice, and discussed about that.

The idea was presented that they would like to show us some of their line, so to speak, and we went out to some display racks the company had just adjoining the office, and we were out there for quite a time looking at penny goods and getting explanations.

The company was offering explanations as to how this business sold. and this variety sold, and how it was made, 440
and so forth, even offering to show some books of some accounts, how much they were selling the goods for.

We did not see some of those things, but I have had too much experience on that and did not bother looking at them.

Then we came back to the conference or to the office.

As I said before, that consumed maybe thirty minutes or more of our time while on the premises.

Q. Then you returned to the conference, and as you have outlined the procedure, Mr. Sanford read from a paper which he had prepared and that took a substantial amount of the [176] remaining time? A. Mr. Sanford was very slow and very deliberate in his reading, and when I questioned him about anything he might have read off as to what it meant, 441
he would first begin to give an explanation, and then refuse to give an explanation, and say. "Let me read that again," and he would re-read the same thing he had just read.

In other words, most things were read twice to us in an effort rather than to explain what he read. Mr. Sanford, as I accused him of being a poll parrot, there read the thing

off from a piece of paper all the time, refused to qualify any of these statements in any way, shape or form at all.

Q. Toward the end of the period during which you were in the office, there was an offer or a suggestion to which there have been several references relating to the 5 per cent increase, and the one week's vacation.

I would like to ask you whether or not that offer had been previously made and refused. Was that a new offer or an old one? A. As I understand it, it was previously made, and make to his employees at various times and was refused by said employees as they reported to me at a meeting.

Mr. Mann: He objects strenuously to giving hearsay, yet when Mr. Graham asks him, he gives the most omnibus [177] hearsay I ever heard about.

When I ask him anything, he objects to hearsay. When Mr. Graham asks him something, he does not object to it at all.

I know he wants to be fair to both of us, but unconsciously he does that.

Trial Examiner Korey: He did answer some of your questions that you asked for hearsay and Mr. Graham, I take it, is trying—

Mr. Graham: I allowed counsel to go into hearsay evidence completely because he wished to do so.

Mr. Mann: I am not finding fault with you. I am finding fault with Mr. Galvin. He did not object to giving hearsay—

The Witness: Mr. Galvin was told not to object to hearsay evidence if the Examiner and counsel were not objecting to it. I finally have been convinced I

am supposed to give hearsay, which I am supposed to know, as a law student, is inadmissible. 445

(There was discussion off the record.)

The Witness: So, as I said, these employees reported to me at a meeting of the employees—

Mr. Mann: I object.

(There was discussion off the record.)

Trial Examiner Korey: Do you withdraw your objection?

[178] Mr. Mann: All right; let him answer. 446

A. You asked about the 5 per cent increase, one week's vacation, as to whether it had been offered and refused at some previous date.

To my knowledge, given to me by the employees themselves, at a meeting of the union and reported by their committee to my organizers and other executives, and also given to me directly at a conference of my executive board one morning at my office on 14th Street, the company had called meetings of the employees.

Mr. Sanford is the company, I take it. Mr. Sanford addressed the employees and made offers to them as to how 447
much they would give them, and they should not go to outside groups to get anything, and these people had refused them.

They told them they wanted an outside union, did not want that money, wanted more money. So, as we were leaving, Mr. Sanford made some references to that 5 per cent

and one week's vacation and we told him then that it already
148 had been offered to his employees by himself and had already refused it, so it really was not any offer on his part to us.

It was just repeating an offer he had already made that had been refused by the employees before, and he was asking us to bring it to the employees to have them agree to [179] it this time and sign individual agreements with them.

Q. (By Mr. Graham) The discussion in paragraph 7 of the contract, it was stated that Mr. Sanford offered to pay at the rate of 35 cents per hour for women and 40 cents for men.

Do you know whether that was at that time the rate al-
149 ready prevailing? I will hand you this contract. The union had requested 40 cents per hour flatly, and Mr. Sanford—A. As I remember it, this is as I said, this contract, proposed agreement was the result of a meeting in which the employees presented these demands.

I would not say definitely whether 35 cents was more or less than the starting wage for beginners at any previous time in the company.

Q. You do not know?

Mr. Mann: What wage, starting wage?

The Witness: Yes, for beginners.

150 Trial Examiner Korey: He does not know.

Q. (By Mr. Graham) I just have one more point I would like to clear up, although it really is not entirely relevant, it has been brought in to quite an extent.

The word "sit-down" in reference to the strike should be qualified somewhat. I will state what I think may be your understanding and ask you whether it is correct.

The word "sit-down" is used in connection with strikes [180] in which the workers actually sit down at desks or benches before which they are working. 451

It may be used in connection with cases in which the strikers do so actually sit down, do remain in a room in which they are working.

It may be used in connection with a strike in which workers simply remain in a plant and do not either remain in a room or sit down at particular desks, or it may be used in a strike in which employees remain upon the property of the company or may be used in a variety of other fashions.

Is that your understanding of the loose term, "sit-down" strike? It is too loose to apply to any particular situation. 452
A. And also should bring in, I suppose, with the absolute refusal of the company to agree to their particular position at that moment.

In other words, the company is not in any way fostering or aiding in this particular situation. They are doing it themselves, refuse to leave the property, and so on and so forth, themselves.

It is very loose, I know. It can mean so many things and is used by newspapers so—I do not know what word to use, but very much by reporters in any situation where somebody happens to have a stoppage in the plant, even though it may not be a sit-down strike, or may not even be a [181] sit-down strike. It may even be just a protest. 453

Q. Your objection to the use of the word is simply because of the ambiguity that has crept into the meaning of the word as a result of having been used by many different people on many different occasions? A. Yes, a catch-word in the labor situation.

(There was discussion off the record.)

454 Mr. Graham: That is all.

Recross Examination:

Q. (By Mr. Mann) You just stated to Mr. Graham that it is your understanding from your knowledge and reading of the Wagner Labor Law, that you become the exclusive bargaining agent for workers only when you represent the majority of the workers, is that your understanding? A. I did not say that. I did not say I read the law. I said it was my understanding of the law.

455 Q. Is not that just what I said? A. No; you said that I had from reading the Act.

Q. Let me ask you this—did you ever read the law? A. Just glanced through it. I have my counsel to give me interpretations.

Q. Did you ever read it? You are a law student. A. I must admit I am reading so much other law I might have confused it with the Labor Law.

Q. Did you read the Wagner Labor Law? [182] A. Through, word for word, I do not think so.

Q. All right. Whether you read it or you did not read it, 456 you do understand that in order to be—for anybody or a labor organization to be the exclusive bargaining agent of workers, that organization must represent the majority of the workers? A. That is the way I understand it, majority of the particular union, or something of that sort.

Q. That is right; that word "majority" is an important word in determining who the exclusive bargaining agent is, is not that right? A. I would say it is.

Q. In fact, it is the word which determines the exclusive bargaining agent? A. It seems to be.

457 Q. Yet, in your telegram, respondent's exhibit No. 1, you did not use the word "majority", is not that so? A. No.

Q. That is an answer. We will pass to the next matter. You said you had made a number of appearances at the National Labor Board. A. At their offices.

Q. Not in connection with this case, only other cases, is not that right? A. Right.

[183] Q. Would not you say you were down there fifty times? A. No.

Q. Twenty-five times? A. Yes.

458 Q. And in conferring with the representatives of the Board there, you told Mr. Graham that it is your understanding that when you satisfy somebody up in the Board, someone in authority, that you represent a majority of the workers, then the Board discourages an election, is not that what you just told Mr. Graham?

Mr. Graham: I object to that.

A. That is my own impression, has to be.

Q. (By Mr. Mann) I am talking about your impression. A. It has to be clarified. You have to clarify it very much.

Q. I am only talking about your impressions.

459

(There was discussion off the record.)

Q. (Continued) It is a direct question to what he said to Mr. Graham, he told Mr. Graham on redirect—you told him that was your impression of what goes on in the Board?

Mr. Graham: I believe it was on cross examination it came out, however.

Q. (By Mr. Mann) You asked him that a few moments ago. I want to ask you this, Mr. Witness: There was a petition verified here for an election on the 19th day of July, 1937? [184] A. Yes.

Q. Which was signed by the Bakery & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity, William A. Galvin, President. Do you remember signing that on the 19th day of July? A. That is true.

Q. So if they entertained your petition and drew a petition, on this 19th day of July, apparently you had not satisfied somebody up in the Board that you represented a majority of the workers? A. If you know the Board procedure, you must first come in giving them something to do before they are going to start doing something for you or go into the records, etc.

We came in and asked for an election because of the coercion that was going on in the plant, even the people that were signing it might be afraid to come around to meetings, the way the employer—

Q. You are not answering me directly. A. I am.

Mr. Graham: I am objecting to the request for a direct answer, because it calls for conclusions as to reasons why the Board may or may not have acted.

Trial Examiner Korey: I will sustain the objection.

(There was discussion off the record.)

The Witness: I will give an explanation, if you request [185] it:

Mr. Mann: Try to answer some questions.

Trial Examiner Korey: You answer and give your qualified statement with it, if you have any qualification to make. 463

Q. (By Mr. Mann) You told Mr. Graham a few minutes ago it has been your experience up at the Board that if you satisfy somebody in authority up there that you have a majority and you represent the majority of the workers in the plant, that in that case and in that event the Board does not order an election—did you say that to Mr. Graham? Did you, yes or no? A. Yes, was it the order, was the word "order"? I am worried about the word "order." There is a difference between our presenting a petition and order. 464

Trial Examiner Korey: Qualify your answer.

A. My answer means, I do not know what the word "order" means, in the substance of the Board, their phraseology and terminology. It may mean anything. All I know, we petitioned for an election, went up there, saw Mr. McCann. By the application blanks we had more than a majority. It seems to me for the purposes of expense and long-drawn-out proceedings of some sort, that the Board then tries to get the employer to come in and say to the employer, "Why have an election? Why is it necessary? Why go through all this expense and procedure and bother and fuss, if these people [186] are already in possession of more than a majority?" That seems to be my impression of what they do, whether they consciously do that or not, it is only still my impression of it. 465

Q. (By Mr. Mann). You say you think you satisfied Mr.

McCann you represented a majority of the workers on or
66 about July 19th? A. No; after we presented the position, I did not see Mr. McCann until between the 19th and 28th. Mr. Sklar presents those—

Q. Do you say you satisfied Mr. McCann prior to the 19th of July that you represented a majority? A. No, that petition was made on the 19th.

Q. That is right. A. Between then and the 28th, we saw Mr. McCann. He brought it down there to prove our contention.

Q. Did you, prior to July 19th, the date of the verification of the petition, exhibit to Mr. McCann evidence which you
67 claimed indicated that you represented him? A. What do you mean by verification of petition?

Trial Examiner Korey: Did you show any exhibits?

The Witness: My signature.

Trial Examiner Korey: Any proof at all?

Mr. Mann: This is a copy.

Trial Examiner Korey: Yes.

[187] Mr. Mann: This petition is a copy?

The Witness: I signed the petition. I do not think it was required.

Trial Examiner Korey: Prior to the 19th.

68 The Witness: The case was not before the Board prior to the 19th.

Trial Examiner Korey: The answer is no?

The Witness: No.

Q. (By Mr. Mann) When do you say you brought up the evidence to Mr. McCann? A. Some time between the 19th and 28th at which we were required by him in some way or

other—yes, on the 23rd, I think, the time Mr. Sanford and Mr. Healey and no one came down, and the Board had a letter from the company saying they would not be there, something of that sort.

Trial Examiner Korey: Mr. Mann, I am going to suggest we do not go into this phase, but whatever happened at the Labor Board and the impressions this gentleman may have of whatever Mr. McCann may have thought, will not be binding on us in this proceeding.

Mr. Mann: That is right.

The Witness: Of course not.

Q. (By Mr. Mann) But whether you did have or did not have a majority of the workers between July 19th and July 28th, it is a fact that you did meet with Mr. Sanford, with Mr. [188] Healey and with the other gentlemen, the other representatives, in their office on July 29th, and there was this conference with you which you do not call bargaining and which they do call bargaining, is that true? A. I did not call it bargaining. I said it was not bargaining in good faith, true.

Q. It was bargaining, was it? A. Not in good faith.

Q. Was it bargaining in any kind of faith? A. No.

Q. No bargaining, according to you. Would you say it was bargaining or not? A. No.

Trial Examiner Korey: If it were bargaining without good faith, you say so?

A. No, it was no bargaining.

Q. (By Mr. Mann) Was it bargaining in bad faith? A. It was no bargaining.

Q. It was no bargaining; that is an answer. Let me ask you something else; you said in answer to Mr. Graham here a moment ago that Mr. Sanford made you the proposition of the 5 per cent increase and a week's vacation, and asked you to recommend that to your workers, and you claim you represented them, so that he could sign, not a contract with a union, but individual contracts with them? That was Mr. [189] Sanford's proposition, was it not? A. No, he did not propose it to me, proposed it to the workers through me.

Q. He was talking to you? A. Yes, as I have said, he very definitely was making an effort to use me as his agent rather than as the agent of his employees.

Q. What did you say about that? A. I told him it was already refused by his employees.

Q. Assuming Mr. Sanford would have agreed to everything that you wanted in this paper, would you let him make individual contracts with his employees? A. I do not know what my executive board or the employees would decide to do in such a case.

Q. In other words, if he had consented to all of your demands here, but would not consent to making a contract direct with the union, you still say you do not know whether or not you would have permitted that?

Mr. Graham: I object; it is a hypothetical question.

A. New procedure to me, and I do not think I am qualified at this moment without good discussion, no.

Q. (By Mr. Mann) You were only designated as a bargaining agent? A. True. 475

[190] Q. For the workers? A. True.

Q. All you are supposed to do is bargain for them? A. True.

Q. If you can get for them their demands, are you not satisfied to have an employer make a contract with them? A. It has never been done.

Mr. Graham: I object, it is hypothetical.

Trial Examiner Korey: Sustained.

Mr. Mann: I except.

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Q. (By Mr. Mann) You insisted on a union contract, did you not? A. I did not insist on anything, just gave him the demands and we got no proper reply to the demands in any way or shape.

Q. One of the demands in that contract was that an agreement be made with your union, is not that right? A. It is in every contract we present.

Q. That is right. That was the thing that broke up the whole thing, Mr. Sanford told you he would never make a contract with your union; is not that true? A. No.

Q. Who is the committee of the employees that you said in answer to Mr. Graham, who reported to you the 5 per cent 477 increase and the week's vacation was refused by the employees? [191] Can you give me the names of that committee? A. If I can remember their names right, Andretti, Blasi, Carmel Tesora, and a couple of more fellows and girls. I do not know the names right now.

Q. What was the date of that? A. The date of what?

Q. When the committee told you that? A. It was definitely

reported to me on the Saturday after, I think the Saturday after July 20th, and at some previous time they said some other things, but I know one time was Saturday after July 20th.

Q. All right, that is all.

The Witness: That was reporting directly to me. They reported to other officers previous to that time.

Mr. Mann: All right.

Trial Examiner Korey: Any other questions?

Mr. Graham: No.

Trial Examiner Korey: We will recess until 1:30 p. m.

(Witness excused.)

(Thereupon, at 12:40 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

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[192] AFTER RECESS

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Korey: Will you call your next witness, Mr. Graham?

Mr. Graham: It will be Mr. Anderson.

Hearings Before Board.

Testimony of James Anderson—Direct.

JAMES ANDERSON a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, 481
was examined and testified as follows:

Direct Examination:

Q. (By Mr. Korey) Give the reporter your full name and address. A. James Anderson, 225 Bowers Street, Jersey City, New Jersey.

Q. (By Mr. Graham) By whom are you employed, Mr. Anderson? A. By Local 405 of the Bakery & Confectionery Workers International Union.

Q. In what capacity are you employed? A. As vice presi- 482
dent of the union and organizer.

Q. How long have you been employed in that capacity? A. Since January 1st or 7th, 1936, as vice president of the union.

Q. Did you have any connection with the union or with a union prior to that time? [193] A. I was a member of the union since May, 1934, and I also was a member of the Amalgamated Engineers Union in England before I came here.

Q. Are you familiar with the constitution and by-laws of this union? A. Yes.

Q. When were you first connected with the union and 483
the National Licorice Company? A. The beginning of July, as I remember, while the National Licorice Company workers were being organized out of our Brooklyn office. I had reports of such activity in the executive meetings at which, of course, I was present.

Q. Did you attend the conference which was held at the National Licorice Company plant at—on the 29th of July, 1937? A. Yes.

Q. Were you present throughout that conference? A. Yes.

484 Q. Have you been present here at the hearing during all of this testimony, during Mr. Galvin's testimony as to the conference? A. Yes.

Q. You heard that testimony? A. I did.

Q. You understood it? [194] A. Yes.

Q. Was his testimony correct in connection with that conference? A. It was correct, yes, sir.

Q. You heard the reference made to a statement made by Mr. Sanford and the following question of Mr. Galvin as to the familiarity of that statement and Mr. Sanford's subsequent statement that he did not deny he was being

485 advised by the Brooklyn Chamber of Commerce? A. I remember that.

Q. Was Mr. Galvin's statement in that connection correct? A. Quite correct.

Q. Did you hear the discussion relative to the stenographer and the notes that were to be taken at that conference? A. Yes.

Q. And will you state in your own words what was said about the stenographer and her notes, that were being taken and the question of getting a copy of such notes later? A. Before the meeting started Mr. Galvin remarked upon the presence of the stenographer and expressed a wish or desire

486 to receive a copy of any notes that were taken by that stenographer.

Mr. Sanford agreed to furnish Mr. Galvin with the transcript or copy of the transcript of that meeting.

Q. That was all that occurred in connection with the stenographer [195] on that day? A. Yes.

Q. When did you first hear of the existence of the strike

which occurred on the 2nd of May? A. Ten minutes, approximately ten minutes to 1:00 on August 2nd. 487

Q. Had you been in communication with the company prior to that time on that day? A. Yes, I had, I had been—I had telephone communication with Mr. Sanford at ten o'clock that morning.

Q. Was that telephonic communication in connection with the matter of the stenographer and the notes taken at the previous conference? A. Yes, I made a request for the transcript, copy of the transcript taken by that stenographer.

Q. Will you describe in your own words the conversation which you had with the company? Mr. Sanford you talked 488
to directly? A. Yes.

Q. Did Mr. Sanford—was that first telephone conversation on the 2nd of August with Mr. Sanford? A. Upon my request for the transcript of this conference, Mr. Sanford informed me that due to the unusual nature or inability of his stenographer to take these notes, they had not been at all satisfactorily done and because of that he [196] felt they would have no value. I suggested that we could have a copy of it, nevertheless, and he further went on to explain that the stenographer had left on her vacation that Friday evening without finishing the notes that she had made, the translation of the notes she had made in shorthand. I then 489
followed that up with the request that we get—that we meet again in an effort to continue negotiations, but before mentioning why, that was my reason, I just asked that we meet again.

Mr. Sanford wanted to know what for. I said it was the wish of the union to continue negotiations and not let

them break down. It was the duty of an organizer to see
490 that such negotiations are kept on.

Q. At the termination of your conversation relative to the stenographer's notes, you were informed definitely that you could not have a copy of those notes? A. That is right.

Q. In connection with part of the conversation that related to a conference, what did Mr. Sanford say as to the possibility of such conference? A. He said that it would be impossible for us to meet in the near future, that they reconsidered and suggested we could meet on Thursday at ten o'clock, on Thursday morning, the following Thursday.

491

Mr. Mann: Who said that, Sanford?

[197] Mr. Graham: Yes.

A. Mr. Sanford. I asked was it possible that we could meet before, as Thursday seemed a long time off. He said no, and explained that he was expecting some visitors, I believe he said, from Europe, or business acquaintances, and for this reason it would not be possible for us to meet before Thursday.

Still asking him to give a further check up into his appointments and see if it was possible for us to meet earlier, he
492 said he did not think it was possible and I closed the conversation by saying that we would meet on Thursday unless we could meet earlier.

(The answer was read by the reporter.)

Q. (By Mr. Graham) After this telephone conversation, did you write a letter to Mr. Sanford relative to the re-

quest for a conference? A. Yes, in the evening of that day.

Q. You wrote the letter the evening of that day? A. Yes. 493

Trial Examiner Korey: That date being August 2nd, is that right?

Mr. Graham: Do you have the original of that letter?

Mr. Mann: Yes.

Mr. Graham: I would like to offer that in evidence. I offer this letter in evidence as Board's Exhibit No. 5.

[198] Trial Examiner Korey: There being no objection, it will be so marked. 494

(Thereupon the document above referred to was marked National Labor Relations Board Exhibit No. 5, in evidence.)

Q. (By Mr. Graham) Did you receive a reply to this letter on a subsequent date? A. Yes, on August 4th, I believe.

Q. On August 4th? Is this the letter which you received? A. Yes, that is the letter.

Mr. Graham: I would like to offer it in evidence as Board's exhibit No. 6.

Mr. Mann: No objection. 495

Trial Examiner Korey: There being no objection, it will be marked as Board's Exhibit No. 6.

(Thereupon the document above referred to was marked as National Labor Relations Board Exhibit No. 6, in evidence.)

Q. (By Mr. Graham) On the 2nd of August did you write
496 a letter to Mr. Freund, representing the State Labor Relations Board, Division of Mediation? Did you on that day write a letter to Mr. Freund? A. Yes.

Q. I have here what purports to be a carbon copy of the letter which you wrote, and I ask you to look at it, tell me whether or not it is a carbon copy of that letter? [199] A. That is right, that is it.

Mr. Graham: The original is not available, having been sent to the Board.

I would, therefore, like to offer this in evidence.

497 Mr. Mann: I object to this on the ground it is incompetent and irrelevant and contains self-serving declarations. The original is not produced, and what is in there cannot be binding on us because we were not a party to it, knew nothing about it, if it was ever sent.

Mr. Graham: I would ask to have the letter marked for identification if it cannot be admitted into evidence, pending an attempt to obtain the original. I would state it does not purport to bind any party except those between whom it passed and is to be admitted further for the purpose of developing the
498 conduct of the union during the strike.

Mr. Mann: Of course, my objection is not directed so much to the fact that the original is not produced. My objection is directed more to the fact that the contents of that letter cannot bind us at all. We cannot be bound by what the union writes to the State Mediation Board when we know nothing about that.

That seems very clear.

Mr. Graham: It is not offered with the intent of binding the company but simply developing the facts that [200] occurred during the strike. 499

Mr. Mann: Even if that would be admissible through oral testimony, which I do not think it would be, certainly it cannot be admitted through the attempt to offer a letter in evidence which is sent to a strange party to the proceeding.

After all, the union is not on trial here. We are on trial. I do not care what their conduct was.

Trial Examiner Korey: That is true, Mr. Mann, but in order to get the labor relationship at the time and the background of it, we will allow it. You may have your exception. 500

Mr. Mann: I object to it, and take an exception.

Mr. Graham: It will then be in evidence as Board's Exhibit No. 7.

(The document above referred to was thereupon marked as Board's Exhibit No. 7, in evidence.)

Q. (By Mr. Graham) You have told us, Mr. Anderson, when you were first informed of the strike, that occurred on the 2nd day of August,—by whom were you informed? A. I was informed by Mr. Bicariello from our Brooklyn office. 501

Q. By telephone? A. By telephone.

Q. What did you do after you received notice of the strike? [201] A. Proceeded to Brooklyn to get closer to the situation and find out more about it.

Q. Will you describe in your own words your subsequent activities after proceeding to Brooklyn? A. Yes. When I arrived at Brooklyn—

Mr. Mann: Was that on the 2nd?

02 A. (Continued) Yes. When I arrived at Brooklyn, I heard from Mr. Bicariello that Mr. Landriscine was down near the plant and it seemed that there was—it seemed that the workers had stopped work.

I then called Mr. Sanford in an effort to find out more about the situation. Mr. Sanford accused the union to me in calling an illegal strike.

I told him that that was not so, the union had not called a strike, that more possibly the workers had shown their dissatisfaction in this way.

503 I then asked was there anything I could do about it to help out as the union was willing to do everything in its power to see if we could settle amicably this situation.

Mr. Sanford said no, he called in the police and that possibly the police would like to speak to me over the phone.

I then spoke to Captain Richter, I believe, of Precinct 84, who asked the name of the local and its affiliations and whether we had called the strike. I told him no. He [202] suggested that Mr. Sanford and I get together and see if we could reach a satisfactory conclusion to this thing, bring to the—bring to an end by talking the matter over.

I told him that I as a representative of the union was will-
504 ing to do that and then it seemed he excused himself on the phone, but still I was able to hear what took place in the room.

He asked Mr. Sanford would he talk to me if I came down. I did not hear Mr. Sanford's answer, but the police officer told me Mr. Sanford would not talk to me, but he, the police captain, would appreciate it if I would come down to the factory and talk to him, which I proceeded to do.

Q. Just continue. A. Upon my arrival in the company, I stood in the lobby and told the telephone board girl who I was, and I would like to see the police officer in charge.

After about five minutes an officer came out, who introduced himself as Captain Richter, and I asked him some particulars about where the people were when he told me they were in the factory.

I asked if I could see any of the representatives of the company, and he told me that he had asked Mr. Sanford to see me when I phoned, and Mr. Sanford refused then, that he did not like being used as a messenger boy for the [203] company, that he would find out whether there was anybody around that represented the company I could talk to.

He got Mr. Healey, who came out and I expressed to Mr. Healey my desire to help in this situation. Mr. Healey said there was nothing I could do. I then asked Mr. Healey if we would meet again on Thursday as arranged, and Mr. Healey said he did not think so, but he would ascertain from Mr. Sanford whether we would or not.

He came back after seeing, I presume, Mr. Sanford, and said that the meeting of Thursday was called off because of the strike.

I asked him does this mean to say that we won't meet again, and he said, "I do not know. Call up at nine o'clock on Thursday morning, and we will probably tell you then whether we can meet you at ten o'clock."

With that, I left Mr. Healey and spoke a little while longer to the police captain, who suggested that I try and get—if I could get some information to the workers inside, that I advised them to leave the company's premises because

he said that he had heard the company was going to hire guards and some of the strikers may get hurt.

I asked him then was it not the duty of the police officers to protect strikers as well as any other citizen who may be around. He said yes, they would do everything in their power to protect them, but meanwhile, he advised me to [204] get the people out if I could. I said I would willingly do that. I left the plant then and spoke to Mr. Landrescine, who told me I could speak to some of the strikers in a door at the back of the building, which, although the doors were open, there was a grillwork in front, iron grillwork, through which I could see inside and speak to them.

I spoke to two or three of the strikers then, and for the first time learned that the strikers were locked in.

Q. Did they tell you that? A. They told me that, yes. I told them to leave the building as quietly as they could, and as peacefully—and as soon as they could.

I then left the company and proceeded to our Brooklyn office.

Q. Did the Union call the strike that occurred on the 2nd of August? A. No.

Q. If the union had called the strike, would you, as an officer of the union in charge in Mr. Galvin's absence, have known of it? A. Most certainly.

Q. After you returned to the union office, what steps did you take to inform Mr. Galvin of the existence of this strike? A. Well, at that time it was impossible for me to inform [205] Mr. Galvin, because I had not yet received any information regarding his whereabouts in Richmond, Virginia.

Q. When did you receive information as to his where-

abouts? A. About five o'clock that evening, in our New York office.

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Q. What did you do at that time? A. I sent a telegram to Mr. Galvin, acquainting him with the situation.

Q. What did you tell him in the telegram which you sent to him? A. I told him that there was a strike in the National Licorice Plant in Brooklyn.

Q. In further connection with this letter which you wrote to Mr. Freund, will you tell us in your own words what further connection you had with Mr. Freund in your attempt to settle the controversy?

Mr. Mann: I object to it as being immaterial.

512

Trial Examiner Korey: I will allow it.

Mr. Mann: Exception.

A. I called Mr. Freund on the telephone, I believe, the following day, and he said he was making efforts to contact the executives of the National Licorice Company, and that he would let me know if there was any further development.

I think he called back the day following that and said that he had been making efforts to get the executives of the National Licorice Company to talk to representatives of [206] the union and had so far failed, and he asked me would the union agree to the employees agree to going back to work while the conference between the union and the company was in progress.

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I told him since the union did not call the employees out of their jobs, that we would be willing to do anything in our power in order to help the situation along.

Q. What was the result of Mr. Freund's efforts, insofar as he may have described that result to you personally? A.

Later conversation with Mr. Freund—he told me he had failed to get the executives of the National Licorice Company to agree to meeting us.

Q. You have stated that you were told by Mr. Sanford to get in touch with him again on Thursday. A. Yes.

Q. What happened between the time when he told you that and Thursday, that led you not to get in touch with him on Thursday? A. I wrote a letter on August 2nd, in the evening of August 2nd, regretting the fact we had been unable to obtain a copy of the transcript of our last conference.

Trial Examiner Korey: Was that Board's Exhibit No. 5?

Mr. Graham: Board's Exhibit No. 5 is a letter from Anderson to Sanford.

Q. (By Mr. Graham) Are you referring to your letter to [207] Sanford? A. Yes, and asked if we could manage to have an immediate conference in order to settle the existing—

Mr. Mann: When is this conversation?

Trial Examiner Korey: The letter he wrote, Board's exhibit No. 5.

Mr. Mann: I thought he was asking about something.

Trial Examiner Korey: No, he is telling what he wrote in that letter. We know that, the letter is in evidence.

A. (Continued) Asking if we could get immediate conference in order to settle the difficulty now.

Q. (By Mr. Graham) Mr. Sanford's reply, which I am

handing you, Board's exhibit No. 6, in that letter Mr. Sanford says what? A. "Since the telephone conversation—" 517

Trial Examiner Korey: Do not read it, give the substance.

A. That he mentions the fact of a sit-down strike occurring in his plant at 12.30, August 2nd, and he further states in his conversations with the representatives of the union that they were under the impression the union would not call any strike.

Trial Examiner Korey: That is the company? 518

A. Yes, the company. "In view of the fact we believe the union called the sit-down strike, we hereby cancel the conference [208] arranged for Thursday, August 5th, at 10:30, and will not set any time for further negotiations until we have had a letter from you informing us as to whether or not the strike was instigated or approved by your union or any official or officials of the union."

Trial Examiner Korey: You are reading from Board's exhibit No. 6?

The Witness: That is right.

Mr. Graham: That is all. 519

Cross Examination:

Q. (By Mr. Mann) Mr. Anderson, you were born in England, is that right? A. Yes, that is right.

Q. And when did you come to this country? A. May 6, 1928—1927, excuse me.

Q. Are you a citizen of the United States? A. Yes.

Q. How long have you been a citizen? A. I have been a citizen for three or four years.

Q. Were you ever convicted of a crime? A. Never.

Q. In this state, anywhere? A. Anywhere.

Q. In any other state or England? A. Or any other country.

[209] Q. You say you became vice president of this Bakery & Confectionery Workers in January, 1936? A. Well, it has been already explained by Mr. Galvin that there—

Q. Don't be as bad as Galvin. A. I just want to explain something. You know the transition of the union when it—from the Inside Bakery Workers. When I was elected—

Q. The question is, did you become a vice president in January, 1936—that is so easy. A. But you said Bakery & Confectionery Workers Union.

Q. Bakery & Confectionery Workers Union.

Trial Examiner Korey: Answer the question; if there is any qualification to made, your counsel on redirect will take good care of you.

The Witness: Yes.

Q. (By Mr. Mann) It is the Bakery & Confectionery Workers International Union, Local 405, which is the union involved in this proceeding, is not that right? A. That is right.

Q. There is no Biscuit & Crackers Union involved here, is there? A. No, there is a—

Q. There is no Biscuit & Cracker Workers local or Biscuit & Crackers anything else involved here, is there? [210] A. Yes, that local is involved.

Q. You say that local is involved? How is it involved? A. Since that local has been named as an individual name 523
of that local, Biscuit & Cracker Workers, the International Union is the Bakery & Confectionery Workers—

Q. Mr. Galvin explained it yesterday. It is the inference that I drew—and see whether you have the same inference—that that local has two names. A. No, it has one name.

Q. What is its name? A. Local 405 of the Bakery & Confectionery Workers International.

Q. Then the Biscuit & Cracker Workers Local 405 is not the same local, is that right? A. It is the same local.

Q. It is the same local? A. Yes.

Q. Then it has two names? A. No, it has not. 524

Q. Well, if the Bakery & Confectioners Local 405 and the Biscuit & Crackers Local 405 is the same local, they are both the same thing, then that local has two names, is not that so? A. May I explain?

Trial Examiner Korey: Yes, explain it in your own way.

[211] A. (Continued) The local itself has the name Biscuit & Cracker Workers Local No. 405, but in the International hooking up with the International always comes the Bakery & Confectionery Workers International Union of America, 525
Local 405.

Q. Which one got the charter from the International union? A. Local 405.

Q. Of what? A. Bakery & Confectionery Workers International.

Q. Did the Biscuit & Crackers Local 405 ever get a charter from the International, to your knowledge? A. Yes.

Q. It also has a charter? A. It has the same charter.

Trial Examiner Korey: Are both names included in the same charter?

The Witness: Both names are included in this charter.

Trial Examiner Korey: One charter.

Q. (By Mr. Mann) You are sure of that? A. Yes.

Q. One charter with both names on it? A. It has the charter with the name Biscuit & Cracker Workers Local, giving the local and name besides the number, that is qualifying the local.

(The answer was read by the reporter.)

[212] Q. (By Mr. Mann) Where is that charter? A. In the union headquarters, 245 West 14th Street, New York.

Q. The union of which you are a vice president? A. That is correct.

Q. Will you bring that charter down tomorrow morning?

Trial Examiner Korey: How big is that?

(There was discussion off the record.)

(The last question and answer were read by the reporter.)

Trial Examiner Korey: I ask you to produce tomorrow morning the charter which you claim your local received, whether it is Biscuit & Crackers or

whether it is Bakery & Confectionery. Will you produce it?

Mr. Graham: I would interpose and say if the witness does not wish to produce, it need not be produced. 529

Trial Examiner Korey: Is that in the form of an objection?

Mr. Graham: If the witness has any desire not to produce it, I consider it not necessary.

Mr. Mann: The witness has not answered the question.

Trial Examiner Korey: Will you produce that charter tomorrow morning? 530

The Witness: I do not think it is necessary. I can produce it if it is—

Mr. Mann: Will you produce it?

[213] Trial Examiner Korey: The answer is yes.

The Witness: Yes.

Q. (By Mr. Mann) What union in England were you a member of, Mr. Anderson? A. Amalgamated.

Trial Examiner Korey: I sustain the objection.

Mr. Mann: He said that.

Trial Examiner Korey: I do not think we ought to delve into that. How long were you a member of this union? 531

A. In 1927, when I left the country, I also left the union.

Trial Examiner Korey: Can you—that was ten years ago, was it?

The Witness: Yes.

Trial Examiner Korey: I will sustain the objection.

532 Mr. Mann: Exception.

Q. (By Mr. Mann) You say you attended a conference held on July 29th with Mr. Galvin? A. Yes.

Q. And who else was there? A. Mr. Sklar, Mr. Bicariello, Mr. Sanford, Mr. Healey, Mr. Smiley. I think that is about all.

Q. You were present throughout the conference? A. Yes, sir.

Q. And when Mr. Graham asked you whether you had heard [214] Mr. Galvin's evidence this morning about the 533 substance of that conference, you said that you did? A. Yes.

Q. Is that correct? A. Yes.

Q. You were sitting here while he testified? A. Yes.

Q. You heard me ask him many questions with reference to this contract or these demands, respondent's exhibit No. 2? A. Yes.

Q. And the things that were discussed by and between you, Galvin, Bicariello, Sklar, Sanford, Healey, Smiley, and so forth—there was discussion throughout. A. I heard you question Mr. Galvin regarding the contract.

Q. There was discussion throughout, was there not, Mr. Anderson? A. No, I do not think it could be called a dis- 534 cussion.

Q. What would you call it? A. It was a case of listening to one man reading from a piece of paper. You could not call that a discussion.

Q. Did you talk at all, you personally? A. I do not believe I spoke personally, no.

Q. You did not open your mouth the whole time? A. Not that I can remember.

Q. Who did the talking on behalf of the union, only Galvin? [215] A. Mr. Galvin. 535

Q. Who else? A. Mr. Sklar—I may have put in a word here and there.

Q. Let us get the people that talked. Did Galvin talk? A. Yes.

Q. Did Sklar talk, the attorney for the union? A. Yes, Sklar.

Q. Did Bicariello talk? A. No.

Q. Not a word? A. No, I do not think so.

Q. What was he there for? A. In case any questions arose regarding the people who were members, workers in the National Licorice, he was possibly a little more familiar 536 with their names than Mr. Galvin.

Q. What is Bicariello in the union? A. He is a trustee.

Q. A trustee? A. Yes.

Q. How many trustees are there? A. Three.

Q. Is he not a bodyguard? A. A what?

Q. A bodyguard. [216] A. We don't need them, we can take care of ourselves.

Q. That is right. Who else was there besides Bicariello? Who is the other man you mentioned at the union, only four there? A. That is all.

Q. You say you might have said something, too? A. It is possible; I cannot remember. 537

Q. And the first thing that happened was Mr. Sanford calling in a stenographer, is that right? A. I think the stenographer was there when we went in.

Q. What time was it that you got there? A. Maybe around two o'clock or a little after.

Q. In the afternoon? A. Yes.

Q. You stayed how long? A. A little less, or around about
538 two hours.

Q. Did you make a note of the time you were there? A. No, I did not.

Q. You were there as the bargaining agent for the workers, is not that right? A. That is right.

Q. You claim you represented the majority on that day? A. Yes.

Q. Do you know how many you represented? A. Do you want me to give a number?

[217] Q. Yes, whatever you know. A. I do not know, I could not mention.

539.

Trial Examiner Korey: Who is here that does know?

The Witness: There is a proof of how many we represent there in the file.

Mr. Graham: We are going to develop that with another witness, actual signatures of the cards and the number thereof.

Mr. Mann: O. K.

Q. (By Mr. Mann) Before you left your union office that day, did you count the application cards? A. No.

540 Q. Did you have them with you? A. Yes, they were in the bag.

Q. They were in a bag? A. Mr. Bicariello's bag, I believe.

Q. Who carried the bag, Bicariello? A. Mr. Bicariello.

Q. Were they the original applications? A. Yes.

Q. Or copies? A. They were originals.

Q. You are sure of that? A. Yes.

Q. With original signatures on them? [218] A. Yes.

Q. With dates? A. Yes.

Q. With names? A. Yes. 541

Q. Did you ever look them over in the union office?

Trial Examiner Korey: Will you please keep your voice up so I can hear you, too?

The Witness: I beg your pardon.

(The question was read by the reporter.)

A. In the course of counting them, which took place, I believe, on July 14th,—I think, the 13th, I happened to count them, yes, in which time, of course, I had to look at them and examine them for their signatures and also further particulars. 542

Q. Do you say on July 14th or 15th you represented a majority? A. Oh, yes, definitely.

Q. You are sure of that? A. Positive.

Q. Did you ever see the telegram Mr. Galvin sent to the National Licorice Company dated July 14th? A. I did not see the telegram. I know such telegram was sent.

Q. Did you have anything to do with the dictation of that [219] telegram? A. It was dictated in my presence.

Q. Did you know that the word "majority" was left out of the telegram? A. To me, it seems irrelevant. 543

Q. Did you know it? A. Yes, I knew that the actual word "majority" was not in it.

Q. Was that purposely left out? A. No.

Q. You are sure of that? A. Yes, positive.

Q. You just said a second ago you did not think the word "majority" was of much importance, is that what you said? A. That is right.

Q. Is that still your answer?

Trial Examiner Korey: You mean, the word "majority" in that telegram?

The Witness: The actual word.

Q. (By Mr. Mann) The actual word "majority" in the telegram. When you are trying to convey to the National Licorice Company that you do represent a majority of the workers—

Mr. Sklar: I object to the question on the ground it is a statement, not a question. I object to its form.

Trial Examiner Korey: We will let the witness answer, [220] if he knows what the question or statement means.

The Witness: May I qualify it a little bit?

Mr. Mann: No, I wish you would answer me.

Trial Examiner Korey: You answer it, if you feel you should qualify it, qualify it.

A. The word "majority" apparently was not in it. It was not purposely left out. It was always felt by the executives of the union that the employers, knowing the law, would know before any union claimed to be the bargaining agent for that employer's workers, would have to have a majority before they made application.

Q. (By Mr. Mann) Supposing they did not have a majority, then they would not be the duly designated bargaining agent for the employees? A. Ours is not that kind of a union.

Q. I did not ask you what kind of a union it was. I asked

if they did not have the majority, they would not be the duly designated bargaining agency, is not that true? A. 547
Under the law, that is true.

Q. That is right. And in this telegram which you say was dictated in your presence, you say that you represent the employees of National Licorice Company. Do you know there are 130 and were approximately 130 employees in that plant on July 14th? By the words "represent the employees" that might indicate you represent five, anything more than one [221] would be the employees, would it not?

Mr. Graham: Those words do not appear alone.

548

A. You are taking several words. You did not continue further where it says "sole bargaining agent".

Q. (By Mr. Mann) That is your conclusion, it does not mean you are the sole bargaining agent.

Mr. Sklar: Mr. Examiner, excuse me, on behalf of the union I object, first, on the ground that the telegram speaks for itself, and, second, upon the ground you do not write a book when you write a telegram, you try to make it as concise as possible.

The inference is there, if not the actual words.

549

(There was discussion off the record.)

(The question was read by the reporter.)

Mr. Graham: I cannot understand that question, myself.

Mr. Mann: Withdrawn. If you do not understand it, maybe I do not, either.

Q. (By Mr. Mann). You say the word "majority" was not purposely omitted? A. No.

Q. Do you know at the time you sent that telegram exactly how many workers signed applications with you? A. Yes, sir.

Q. How many do you say now? Can you tell us that now? A. I could not tell you that now.

[222] Q. But you knew it then? A. We knew there was a majority before the telegram was sent.

Q. All right. You say you first heard of the strike at about ten minutes to one on August 2nd? A. Yes, sir.

Q. Where were you at ten minutes to one on August 2nd? A. I was in 211—2110 Queens Plaza. I was in Queens, in our organizing office in Queens.

Q. You were in your organizing office in Queens? A. Yes.

Q. You got a telephone call there from somebody? A. That is right.

Q. Mr. Bicariello, is that right? A. Yes.

Q. What did he tell you on the phone? A. He told me that there was some trouble in the National Licorice Company.

Q. Is that all he told you? A. Yes, that was enough.

Q. Did he tell you there was a sit-down strike? A. He did not tell me what it was, he told me there was trouble in the National Licorice.

Q. Did he ask you to come over? A. I told him I was coming over.

[223] Q. I see. What was Mr. Bicariello doing there at ten minutes to one, do you know?

Mr. Sklar: That is objected to.

Q. (By Mr. Mann) What was he doing there?

553

Trial Examiner Korey: If you know the answer, tell us.

A. He was in the Brooklyn organizing office, his assignment was there.

Q. (By Mr. Mann) Had you sent him over there around 12:00 noon, or 12:30, at noon, on August 2nd? A. It was his job to be there all day every day.

Q. Where, at the plant? A. No, I did not say he was at the plant. I said he was at the organizing office, 194 Park Avenue, Brooklyn.

554

Q. Did he call you from there? A. Yes.

Q. Was he not at the plant? A. No.

Q. How do you know that? A. He called me from 194 Park Avenue.

Q. How did he know there was trouble at the plant, do you know that? A. Yes.

Q. How is that, explain it?

Mr. Graham: If we are going to go into hearsay on both sides, all right.

[224] Trial Examiner Korey: Let us hear the story.

555

Mr. Graham: You are trying to prove through what he heard where somebody else was.

Trial Examiner Korey: If he knows, he is asking him. If he knows, let him tell us.

Mr. Graham: All right.

Q. (By Mr. Mann) Do you know? A. Yes.

Q. Do you know where he called you from? A. Yes, I know he called me from 494 Park Avenue.

Q. Do you know how he knew there was trouble at the plant of National Licorice? A. Yes, sir.

Q. How did he know that? A. It seems the workers who were locked in the National Licorice Company were able to get to a telephone—they were able to get to a door at the back of the plant. There was a man selling ice cream outside the plant, and one of the workers who was locked inside, gave the ice cream man a nickel to make a phone message to a certain number and tell them there that there was trouble in the National Licorice plant.

The ice cream vendor phoned this information to the number which he was told, which happens to be our Brooklyn office. Mr. Landriscine went down while he was on his way [225] down Mr. Ricariello phoned me up.

Q. Who were the workers that you say were locked in, name them?

Trial Examiner Korey: If you know.

A. I do not know all of them.

Q. (By Mr. Mann) How many were there, do you know that? A. All the employees.

Q. All the employees were locked in? A. That was my—

Q. 130 employees, that is the information which you got is that right? A. Yes.

Q. I see. Do you know how they were locked in—locks put on the door so they could not get out, is that your understanding? A. Yes, I believe there were locks put on the door so they could not get out.

Q. You do not know the reason why the National Licorice

Company would lock in employees and not let them go out, do you? A. No, I cannot figure out a reason.

Q. Did you ever hear of any employer in the city of New York locking in his employees in the plant and not letting them go out? A. Yes, it happened before.

[226] Q. You heard of that? A. Yes, sir.

Q. Is that a common practice? A. Not a common practice.

Q. Very uncommon. Who else did you ever hear had done anything like that besides National Licorice?

Mr. Sklar: Objected to, it is immaterial.

(There was discussion off the record.)

Trial Examiner Korey: If the witness knows, we will let him answer.

A. I have read of other situations, yes, where workers have been locked in.

Q. (By Mr. Mann) Name me one situation where you read of that being done. A. Offhand, I could not—

Mr. Sklar: That is objected to as immaterial.

A. Offhand, I could not.

Trial Examiner Korey: Let it stand, the answer is there.

A. I could not give you the name of the company in which it happened.

Q. (By Mr. Mann) Do you know it is a violation of law for an employer to do that, subject to damages for false arrest? A. Yes.

[227] Q. Did anybody ever sue National Licorice Company
562 for that?

Mr. Sklar: That is objected to as immaterial.

Trial Examiner Korey: I will sustain it.

(There was discussion off the record.)

Q. (By Mr. Mann) Give me the name of the employee that telephoned to your home address, do you know that? A. No.

Q. At ten o'clock that morning you had had a telephone
563 conversation with Mr. Sanford? A. Yes.

Q. At that time you asked him for a transcript of those stenographers' notes, is that right? A. Yes.

Q. And he told you that because the stenographer had left for her vacation, they were not available, is not that right? A. No, he first told me that his stenographer was not qualified, not being qualified to make a correct translation of those notes, and I told him that we would appreciate a copy, nevertheless.

Q. Yes. A. Then he told me that the stenographer had left for her vacation on Friday evening and had been unable to complete them.

564 Q. And then you said you suggested—this was your testi-
[228] mony on direct examination—that you and he, your representatives and his representatives meet again. Those were the words you testified to, is that true? A. Yes.

Q. Was that— A. Yes.

Q. You said it was the duty of the union to see that negotiations should be continued, were those the words you used, negotiations should be continued? A. I possibly used that word.

Q. Those are the words you testified to on your direct examination. Were those the words you used? A. Here? 565

Q. In your telephone conversation to Sanford. A. I didn't use the word "negotiation," just used the word "meeting," which I hoped we could meet again.

Q. You said on direct examination you told Sanford over the telephone on Monday morning at 10:00 o'clock it was the duty of the union to see negotiations should be continued. Now, I ask you, was that testimony on your direct examination correct? A. Well, I gave you the thought behind my conversation, and I would not be expected to remember each word that I said. That was the thought implied.

Q. When you swore under oath a few minutes ago, you 566
said to [229] Sanford over the telephone that you thought it was the duty of the union that negotiations should be continued, were you testifying to the truth? A. Yes.

Q. What is that? A. Yes.

Q. So you did say those words, "negotiations should be continued," is that right? A. I do not remember.

Mr. Graham: I object to counsel's attempt to pin down to particular words, conversation.

Mr. Mann: Using the words he used.

Mr. Graham: That occurred a long time ago.

Trial Examiner Korey: If the witness feels he can 567
answer those questions, and if he later wants to qualify them, we will permit him to do that.

A. The exact wording I do not think I could be expected to remember, in the exact words. I thought—the thought I meant to get over to Mr. Sanford was that it was to the advantage of all concerned if we meet again.

Q. (By Mr. Mann) On July 29th, Mr. Anderson, there were negotiations, were there not, between you and Mr. Galvin and Mr. Sanford and Mr. Smiley and Mr. Healey and Mr. Sklar and Mr. Bicariello and all these eight people that were in that room on July 29th from 2:00 to 4:00 p.m., is that not [230] true? A. That could hardly be called negotiations.

Q. They could hardly be called negotiations, is that your answer? A. Yes.

Q. What would you call them? A. We listened and we asked questions and we listened again. That could hardly be called negotiations.

Q. There were questions and answers and offers and counter-offers, and so on? A. No, no, somebody read from a paper, the question was asked, and then the same people—the same paper was read again.

Q. We went over that—you went over every—may I see respondent's exhibit No. 2, please?

(Respondent's exhibit 2 was handed to Mr. Mann.)

Q. (By Mr. Mann) You heard me question Mr. Galvin this morning, did you not? A. Yes.

Q. About what transpired there? A. Yes.

Q. And I read off every one of these paragraphs in respondent's exhibit No. 2, and some of the answers—all of the answers—all of the propositions or offers or suggestions that Mr. Sanford and Mr. Healey and the members of this com- [231] pany made to your union in answer to your offers or to your demands contained in this respondent's exhibit No. 2.

You heard all that, did you not?

Mr. Sklar: I object to the form of the question on the ground the question does not state what the record states. The record shows thus far Mr. Sanford alone directed any questions or made suggestions. Mr. Healey did not. 571

Trial Examiner Korey: He was asking whether he heard him ask that particular line of questioning of Mr. Galvin.

Mr. Sklar: My objection is on the ground no such testimony was asked of Mr. Galvin.

Mr. Mann: You were not here this morning?

Trial Examiner Korey: If you know.

Mr. Graham: He was here during the examination of Mr. Galvin on that point. 572

Mr. Mann: He came in much later.

Trial Examiner Korey: If you know, tell us.

A. I was here when you were asking these questions.

Q. (By Mr. Mann) It is a fact each one of these paragraphs was taken up and discussed and you said something or Galvin said something on behalf of the union, or Sklar, on behalf of the union, and Sanford and Healey and probably one of the others said something else, is not that so? A. No.

Q. What did you do in there for two hours? [232] A. May I tell you? 573

Q. Sure, tell me, that is why I am asking you. A. When we went into the office of Mr. Sanford, I imagine it to be Mr. Sanford's office, we met in there Mr. Sanford, first of all,—we spoke about the weather and then we—

Q. We are not interested in that.

Mr. Sklar: He is going to tell you how he spent two hours in that place. Let him answer the question.

Q. (By Mr. Mann) Let us get it—you spoke first about
574 the weather. How long did that take?

Trial Examiner Korey: In order to facilitate this, how long did it take before you actually started to discuss or before you heard Mr. Sanford read this statement?

A. I would say about seven to ten minutes.

Q. (By Mr. Mann) Before you came in there? A. No, when we were there, they were speaking about other things before Mr. Sanford started to read from the paper he had.

575 Q. That took seven to ten minutes? A. About that, I would say.

Trial Examiner Korey: There was some testimony here about Mr. Sanford, I believe, or somebody, showing samples. Were you with the people at the time?

A. Yes, that was after Mr. Sanford had read the paper that he had in front of him.

[233] Q. (By Mr. Mann) Yes. We then went to the display counter and while there I saw a variety made by National Licorice which had been a popular seller in the country from which I originally came, and I mentioned this to Mr.
576 Smiley, who said he would send up for a box of this variety and we waited there until he came back.

Trial Examiner Korey: How long did that take?

A. I imagine we were—that took a little over half an hour. Then when we returned to the office, several British trade

magazines were brought out and shown us by Mr. Smiley, showing us the varieties that were made in England, and they told us what these varieties sold for in America. 57

This took up a little time, too.

Q. (By Mr. Mann) How much time was taken up in the discussion of your demands, respondent's exhibit No. 2? A. We did not discuss the demands in exhibit No. 2.

Q. What then did you do with them, were they not read? A. They were not read.

Q. By nobody? A. No.

Q. Did you see Mr. Galvin's copy of respondent's exhibit No. 2 with the notes on it? A. Yes.

Q. That is here in the courtroom? [234] A. That is right. 57

Q. The notes are in his handwriting? A. He said so, they must be.

Q. Did you see him write in that time? A. No, I was not watching him write. I was to the left of him and somebody was in between.

Q. Do you not know he said he made those notes at the time of this conference? A. I said, Mr. Galvin said they are his notes, they are his notes.

Q. Do you not know those notes were made as a result of what was being discussed there? A. They were the result of what was read off Mr. Sanford's paper.

Q. But you also talked, did you not, on behalf of the union? A. I suppose I did. 57

Q. When Mr. Sanford was talking from his paper, he was talking from his paper in answer to your demands, was he not? A. Well, he did not say so, but I suppose that is what he was reading off.

Q. You knew that, did you not? A. We did not expect to go there and have Mr. Sanford read a copy of something which he had there and nobody else able to see it.

Q. Mr. Anderson, when he was making you an offer as to
580 what [235] he was willing to pay his workers, it was in answer to what you were requesting in respondent's exhibit No. 2 under paragraph 3-A, B, C, D, and E, what you wanted for the workers, is not that right? A. You could hardly blame us for not thinking so.

Q. I am not blaming you for anything, I am asking you what happened. A. I have told you Mr. Sanford read off the paper. It was not specified as an answer to our agreement.

Q. What then was it an answer to, was he making a speech for a political organization? A. Maybe for the Brooklyn Chamber of Commerce.

581 Q. Do you not know? You want to be very frank with us here. A. I have been frank.

Q. Do you not want to tell the truth? A. I am telling the truth. I have not kept back one thing. I have even spoken to you when my counsellor told me—when I answered.

Q. Do you not want the Trial Examiner to understand Mr. Sanford was making an offer of wages to you on behalf of these workers? He was making that as a counter offer to what you were demanding in your respondent's exhibit No. 2 on wages. A. I would like the—

Q. Do you not know he was doing that, is the question?

582 Trial Examiner Korey: Answer, if you know, yes or no, [236] whether you knew he was doing it.

A. I can qualify it afterwards, I suppose. He was doing that.

Q. (By Mr. Mann) Do you not know—

Mr. Graham: The witness was given a chance to qualify before he answered.

A. I said yes, but we could be expected to understand that on the other hand, since this same offer had been made to his workers by him before, and other executives of the National Licorice Company, it could hardly be expected to be an answer to a contract we had put in, because—that is, to demands we had put in. 583

Q. (By Mr. Mann) Let me ask you this—when you come in with demands on behalf of workers whom you claim to represent as a bargaining agent, you did not expect to get everything you ask for, do you? That is not bargaining, is it? A. It is better to go in expecting you are going to get everything.

Q. All right, but if you do not get it, you are willing to listen to what the other man has got to say? A. Union officials are always willing to listen. 584

Q. If you ask for 50 cents an hour and the other man says "I will only give 2 cents an hour," that is a discussion and negotiation on that question, is it not? A. I would hardly consider it to be so.

[237] Q. You would not consider that negotiation? A. No.

Q. You would not consider that bargaining? A. I suppose —no, I would not consider it, not 50 cents to 2 cents.

Q. If you are offering to sell me something for 5 cents and I offer you 4 cents, and I offer you 3 cents, and you come down to 4 cents, do you think that is bargaining? A. Yes. 585

Q. But if you ask me for 50 cents an hour increase for my employees and I offer you 5 cents and do not want to increase that 5 cents, you think that is not bargaining? A. I do not think that is sincere bargaining, no.

Q. I did not ask you whether it was sincere or insincere. I asked you whether that is bargaining.

Mr. Graham: Before we go further into this, I think it is irrelevant what definition the witness might place upon a word. Our purpose is to develop the facts and let the Board decide whether there has been or not.

Trial Examiner Korey: I have been lenient, trying to see what counsel is trying to get at.

Mr. Mann: One of the allegations in the complaint—

Trial Examiner Korey: As far as quibbling over what a witness' definition of a word is, I think we ought to be given some kind of credit in determining that from the evidence [238] that is being adduced here.

Mr. Mann: That is right. Do you not think I would like to bring out as to exactly—

Trial Examiner Korey: I think you have certainly had plenty of opportunity and have certainly taken advantage of bringing that out in your own way.

Mr. Mann: All right.

Q. (By Mr. Mann) You asked on behalf of your workers for two weeks' vacation, did you not? A. Yes.

Q. Mr. Sanford offered you one week, did he? A. He read—

Q. With pay? A. He read in his paper there was a week's vacation.

Q. Did he offer you? You see, you do not answer me directly. Did you ask him for two weeks and did he offer your one week? I do not care whether he read from a paper or read from a pamphlet—did he offer you one week? Was there an offer and a counter-offer on this question of vacations?

Mr. Graham: This is calling for a conclusion of law, whether there was an offer.

Trial Examiner Korey: Whether an offer or counter-offer—tell us exactly what was said and done there.

A. I believe Mr. Sanford read from his paper.

[239] Trial Examiner Korey: What did he read from his paper?

A. That there was a week's vacation to his workers if they had worked a certain length of time, or something like that.

Q. (By Mr. Mann) You insisted on two weeks, did you not? You asked for— A. There was no insistence on anything there at that meeting.

Q. Did you finally agree to accept his proposition of one week? A. No.

Q. You rejected his proposition of one week? A. We did not reject it.

Trial Examiner Korey: So I can get this picture right, what was happening at this meeting? Do you mean to infer that after you had these preliminaries of weather talk and other things you mentioned, Mr. Sanford took out some written statement and read that statement?

A. Yes.

Trial Examiner Korey: All the way through, without—

A. He first read it all the way through, yes, and then we went over it again, partly then, and then we went out to view these different varieties of candy and continued when we came back.

When any question was asked while he was reading it he
92 [240] just re-read it.

Q. (By Mr. Mann) Do you not know he had twelve paragraphs in the paper from which he was reading which was a paragraph applying to each of your demands in the twelve paragraphs in your respondent's exhibit No. 2, which has been offered here in evidence?

You do not know that is the fact? A. I did not.

Mr. Graham: I object because the witness was not shown the paper, and, therefore, could not know that.

Mr. Mann: All right.

93

Q. (By Mr. Mann) Do you know whether that is the fact or not? A. I do not know that because I did not see the paper.

Q. I did not say you did. I am asking you whether you know it from some other reason; you do not know that is the fact? A. No.

Q. When Mr. Sanford was reading from that paper, did not he read each item separately as it applied to each one of the paragraphs of your demands contained in respondent's exhibit No. 2, is not that the truth? A. There was no comparison made at that time, that would lead us to believe that.

94 Q. There was not? [241] A. By Mr. Sanford, no.

Q. Did not he refer to each paragraph? A. Paragraph of what?

Q. Of your demands? A. No.

Q. Was it there, was it in front of anybody? A. It was in front of people sitting on our side of the table.

Q. Mr. Galvin had his copy there, which he has shown us— A. I said—

Q. On which he was making notes and Mr. Sanford had his copy, the one you had left there on the 19th day of July? 595
A. I did not see it.

Q. Look at it. Is not that the one you left there on the 19th day of July? Look at the date. A. That may have been the one that was even in Mr. Sanford's possession, but I did not see it in front of him while he was reading from his other paper.

Q. Did you ask to look at what he was reading? A. No.

Q. Did you ask him whether he was reading from your demands? A. Well, that would have been a foolish question.

Q. I did not ask you whether it would be foolish or smart. I asked you did you ask him. 596

[242] Trial Examiner Korey: Yes, or no?

A. We did not ask it.

Q. (By Mr. Mann) When you came in and sat around to talk, was not somebody asking on behalf of your union whether Sanford and his executives had a copy of the demands in front of them—nobody asked that? A. No.

Q. What did you think you went there for on July 29th?

Mr. Sklar: That is objected to, if you please, your Honor. 597

Trial Examiner Korey: I will allow it. Tell us why you went there.

Q. (By Mr. Mann) What did you think you went there for, on that day? A. To bargain on agreement.

Q. Your demands? A. On a contract presented by the union.

Q. Right, and the contract presented by the union is
598 respondent's exhibit No. 2, dated July 19, 1937, is that not right? A. That is right.

Q. You had left there, left that contract with Mr. Sanford ten days before? A. True.

Q. When Mr. Sanford started to read on July 29th, you know [243] that he was reading from that paper, do you not? A. No.

Mr. Graham: I object on the same grounds as before.

Trial Examiner Korey: The answer is there, he
599 said no.

Q. (By Mr. Mann) You know he was reading with reference to their contract, do you not? A. No.

Q. What did you think you were doing there after you had been at the Board the day before and McCann told you to go over there and Sanford told you to come over there so you could bargain with him with reference to something? What did you think you were bargaining about? A. That is what I was trying to think. I could not figure it out, did not sound like bargaining to me.

Q. To you it all seemed a deep mystery? A. No, it did
600 not seem a mystery, it did not seem like bargaining when he read some concrete statements on a piece of paper. That is not bargaining, to my mind.

Q. When Mr. Sanford offered you one week's vacation instead of two weeks' vacation, where do you think he got the two weeks' vacation from, from the air? A. Which two weeks?

Q. The one you mentioned in your agreement. A. Mr. Sanford did not mention two weeks.

Q. Did he not offer you one week's vacation? [244] A. He offered his workers one week.

Q. To you, that day, the 29th? A. He previously offered it to his workers.

Q. To you, that day, the 29th of July; please answer me.

Mr. Graham: Could the question be phrased so as to exclude the word "offer"? Perhaps that is the difficulty that—that issue has been raised several times here already.

Q. (By Mr. Mann) Do you understand me, Mr. Anderson? You, as the vice president of the union— A. True.

Q. This was not a mystery to you, was it? A. When you say "offered," Mr. Counsellor, you imply it was offered for our acceptance or refusal.

Q. Instead of "offered," I will say, what did he say? I am going to ask you that, what did he say about vacations? A. He said he would give his workers one week's vacation.

Q. Was not that something which he said in answer to your request in your paper, that you wanted two weeks' vacations, is that not true?

Mr. Graham: I object to that because the witness did not testify as to why the offer was made and whether or not it was an offer. Counsel has asked why Mr. Sanford made the offer.

Trial Examiner Korey: If the witness knows, he may [245] answer; if he knows why Mr. Sanford made that statement in regard to vacations, let him tell. If he does not, let him say so.

A. I said before, I could not consider it as an offer as a basis
604 of bargaining on this other contract.

Q. (By Mr. Mann) Was two weeks' vacation mentioned there by anybody that day? A. I think Mr. Galvin did ask what had happened to the two weeks' vacation and that is one of the occasions when Mr. Sanford just went back to his paper and read off the paragraph.

Q. So Mr. Galvin did mention two weeks' vacation, which was in item 5 of the respondent's exhibit No. 2, and in answer to Mr. Galvin's request for two weeks' vacation, Mr. Sanford said it is impossible for the company to give their employees two weeks' vacation with pay, "And we are only
605 going to offer you one week's vacation."

Is not that what happened? A. I do not know if that was the exact words.

Q. I do not care whether it was exact or not exact. Is not that the substance of it? A. It may have been.

Q. Yes or no? A. It may have been.

Q. Do you not know that it was? [246] A. I cannot be expected to remember word for word what was on the piece of paper.

Q. You do not remember that? A. No.

Q. I see. Did you and Mr. Galvin and Mr. Sklar insist upon having a union contract signed by the union on this
606 29th day of July at the office of the National Licorice Company?

Mr. Sklar: Will Mr. Mann explain what he means by union contract? Does he mean union shop or union agreement or what?

Mr. Mann: He knows what it means.

Trial Examiner Korey: Board's—the statement.

Mr. Graham: The contract between the union and the company.

A. Did we insist? It was mentioned, yes.

Q. (By Mr. Mann) What did Mr. Sanford say about that? A. That he would not sign a contract with any union.

Q. That is paragraph 1—paragraph 2 of your demands, is it not?

Mr. Sklar: Show him the exhibit.

Mr. Mann: It says, "The company shall employ none but bona fide members of the union who are in good standing." That is the closed shop provision, is it not?

Mr. Graham: Could the witness have a copy of the contract?

Mr. Mann: I will let him look at this.

A. Is that what—

Q. (By Mr. Mann) That is the closed shop provision, is it not? A. Union shop, not closed shop.

Q. Union shop. What did Mr. Sanford say about that? A. He said, as I said before, that the company would not sign a contract with the union.

Q. Did he say; or did he not say that the company cannot agree to the closed shop and will not agree to the closed shop or to hire only members in your particular union, is not that the words he used? A. I do not remember.

Q. Do you remember him saying that the company believes in the American principle, that every man has a right to seek employment wherever he sees fit at whatever terms are acceptable to him?

Do you remember those words? A. Yes, I have heard them
610 so often.

Q. Do you remember him saying that the Wagner Act does not require a closed shop, nor can the company force any of its employees to join a union against their will, do you know that? A. Yes, I think he said that, too.

Q. Do you remember him saying that many of the companies' [248] employees do not desire to be in your union? Do you remember him saying that? A. I think he did make some such statement, although I did not agree with him.

Q. Now that your recollection is refreshed, do you not
611 remember that every one of your twelve paragraphs was discussed? A. No.

Q. On that afternoon? A. No.

Q. In those two hours? A. No.

Q. What paragraphs in respondent's exhibit No. 2 were not discussed, if there were any such? A. The mere fact of Mr. Sanford reading these out, which, in his mind may have been an answer to these, does not—we consider—we cannot consider it as discussion.

Q. You did not consider it discussion? A. No.

Q. You thought he was talking for the benefit of anybody here?

612 Mr. Sklar: That is objected to.

Q. (By Mr. Mann) What do you think he was doing there, Anderson, when he was talking to you four men that day? A. We thought he was just reading off the Brooklyn Chamber [249] of Commerce stuff that we have come in contact with previously, that all the members of the Brooklyn Chamber of Commerce were supplied with when dealing with labor unions.

Mr. Mann: I move to strike that out.

Mr. Graham: That is in direct answer. 613

Trial Examiner Korey: You asked him what he thought.

Mr. Sklar: Certainly.

Q. (By Mr. Mann) Did you object to him reading from the paper? A. No; after all, it was his office.

Q. Did you think there was anything wrong in his reading from the paper? A. Personally, did I think?

Q. Yes. A. Yes, I thought it was wrong.

Q. You thought it was wrong? A. Yes.

Q. Wrong in what respect? A. Well, it was wrong in 614
this respect: if he had had a counter-proposal or counter-agreement that he would have shown the same courtesy to the union representatives as the union representatives showed him and his fellow officers in giving them a copy of what they were reading.

In other words, when we went in with our contract, we gave him a copy. We felt he should have returned that [250] courtesy and let us know what he was reading and give us a copy.

Q. Did you not realize that the reason that was not done was because at that time, on July 29th, was when you all 615
came in and all sat down to discuss the demands, whereas on July 19th, there was no discussion? You had simply left your demands for the perusal of Mr. Sanford, so that he could determine at some future date what his answer would be to them; did you not realize that?

Did you not realize that? A. I still could not consider that as an excuse for not letting us have a copy of what he was reading, so we would better understand it as we went along.

Q. You felt offended because you did not get a copy of
616 what he was reading? A. To the contrary, no, we did not feel offended.

Q. Did you ask for a copy? A. No, that might have—

Q. You thought he voluntarily should give you a copy, is that right? A. He might—we felt that that would be the thing to do, yes.

Q. Did you get sore because of that, or angry? A. No, no, having had experience in the past, that would not make us sore, having had experience in the past in dealing with employers.

[251] Q. All right. A. Such small things as that would
617 not make us sore.

Q. Yes; let us go on a little bit.

On August 2nd, you said that you had made this telephone call to Mr. Sanford at 10:00 that morning? A. Yes.

Q. And that the last thing you said to him—this was, of course, before the strike. This was ten o'clock. The last thing you said to him was that it was the duty of the union to see that negotiations should continue and Sanford then suggested that you meet again on August 5th, is that right? A. What is that?

Q. Was that on Thursday? A. Yes.

Q. August 5th was on a Thursday. A. Mr. Sanford—I
618 mean, Thursday, at ten o'clock, yes.

Q. You said that you would like to meet before that? A. Yes.

Q. And he said that it was impossible because some people were coming from Europe, is that true, is that your testimony? A. Yes, some business men or some acquaintances.

Q. When you testified in answer to Mr. Graham that you

closed the conversation by saying that you would meet on Thursday unless you could meet earlier, is that true; did 61
[252] you say that? A. Yes, that is right.

Q. On the evening of that date, the evening of August 2nd, you had a letter, which is board's exhibit No. 5 offered in evidence.

What time did you write that letter on August 2nd, do you remember? A. About six o'clock, I would say.

Q. You sent it by registered mail? A. Yes.

Q. You dictated every word that is on here, is that right? A. Yes.

Q. You knew at that time about the trouble that had occurred in the plant at 12:30, did you not? A. Yes. 62

Q. You did not refer to that in this letter, did you? A. Yes, I believe I did.

Mr. Graham: If counsel will show the letter to the witness, he will be able to refresh his recollection better on that.

A. I say here, although it is—

Q. (By Mr. Mann) Answer the question. Did you refer— A. Yes, I said, yes.

Q. Where? [253] A. I will read it—"We beg to advise you that the union is now ready and willing to continue"— 62

Excuse me.

"—although it is regrettable that these notes are not available,—" (speaking of the notes) "—this should not stand in the way of an immediate conference between us, looking toward an amicable adjustment of the existing controversy."

Q. Controversy? A. I have an English pronunciation.

Q. Oh, I see. A. The word is "controversy." I am sorry if you find it a little difficult to understand.

Q. Oh, not at all. A. I will proceed—

622 [254] Q. (By Mr. Mann) Go ahead. A. "We beg to advise you that the Union is now ready and will continue to hold itself in readiness to meet with you at any time and place you may designate in order to mediate the dispute, and through collective bargaining arrive at a mutually satisfactory agreement."

That is the part in which I spoke of the strike.

Q. You spoke of the strike? A. Mentioned it—

Q. You do not mention the word "strike".

Mr. Sklar: That is objected to. The letter speaks

623 for itself, Mr. Examiner.

Trial Examiner Korey: All right.

Q. (By Mr. Mann) You used the word "controversy"? A. Yes.

Q. Do you think it was synonymous with the word "strike"? A. Controversy is a different—

Q. Did you think— A. Yes.

Q. Did you not want to convey the impression by that letter that you did not know a strike was on? A. No, I did not have that intention.

Q. Did not, all right. Did you want to make it appear by

624 that letter that you did not call the strike? A. I did not have any ambiguous mention or intentions when [255] I wrote that letter.

Q. Were you trying to hide the fact that your Union had called that strike?

Mr. Sklar: That is objected to.

Q. (By Mr. Mann) By the wording of that letter—

Trial Examiner Korey: I will allow it.

A. It was unnecessary, since the Union did not call the strike.

Q. (By Mr. Mann) Did you use the word "controversy" perfectly instead of the word "strike"? A. No, not for any special reason I can furnish you.

Q. Why did you not use the word "strike" if you knew already since ten minutes to one of that same day that there had been trouble in the plant and there was a sit-down strike?

Mr. Graham: I object to further analysis of the particular mention and choice of words. It seems to me there has been enough questions on this sort of thing and it is not entirely irrelevant, but we have gone into it thoroughly.

Trial Examiner Korey: He wants to know the intention; I think we will let the record have the intention.

Mr. Graham: He has asked the intention and been answered several times.

A. I expressed myself—

[256] Trial Examiner Korey: I do not believe Mr. Mann will go much further into that.

Q. (By Mr. Mann) You got an answer to that letter, did you not, on August 3rd or August 4th? A. Yes.

Q. Mr. Anderson, did you have charge of ordering the pickets on this strike and supplying the signs? A. Yes.

Q. Did you arrange for the number of pickets? A. I asked Captain Richter at the time I left the National Licorice Com-

pany office on the afternoon of August 2nd, how many pickets
628 he would permit on that plant. He told me any number at all. So that was all the arrangements that were made.

Q. So you ordered how many people to picket with signs? A. I did not personally order any number.

Q. You had charge of that, did you not? A. Yes.

Q. In the absence of Mr. Galvin who was in Richmond? A. That is right.

Q. —How many did you arrange for to be there the next morning? A. I arranged with the organizer in charge of Brooklyn headquarters that pickets should be put on the plant. I did not specify number, nor did I inform any of the
629 pickets [257] personally. I went back to New York.

Q. Do you know how many pickets were there on the morning of August 2nd? A. Exactly, no.

Q. Is it a fact that there were pickets without signs on the night of August 2nd, do you know? A. It is possible.

Q. Do you know how many, about? A. No.

Q. Was that under your order? A. That the pickets were on the place? Yes, I suppose it was.

Q. Although you say the Union did not call the strike, you now say you arranged for the picketing and ordered pickets to be there. A. Well, I do not like the implication there.

630 Q. There is no implication about that. A. Take them separately—the Union did not call the strike, that is one. The other one, we will say, I ordered pickets.

Q. You ordered pickets? A. Yes.

Q. You arranged for signs? A. Yes.

Q. Paid for the printing of the signs? [258] A. Yes.

Q. You were satisfied to have that strike continue, is that right?

Mr. Sklar: That is objected to.

A. We were not satisfied.

Q. (By Mr. Mann) You were dissatisfied?

Mr. Sklar: I object to the form of the question, if you please.

Q. (By Mr. Mann) Did you order the workers to go back to work?

Mr. Sklar: That is objected to.

Q. (By Mr. Mann) He said he was not satisfied. Did you order the workers to go back?

Trial Examiner Korey: We will allow it.

Mr. Sklar: Exception.

Mr. Graham: I would like to have the witness allowed to explain his answer, in saying he was not satisfied with the continuation of the strike.

The Witness: May I do that?

Trial Examiner Korey: Yes, you may answer.

A. Unions, or officials of Unions, do not like strikes under any circumstances.

Mr. Mann: Now you are going to give us one of the Union speeches. We want to know what happened in this case.

A. That is not a speech, that is the answer. That is why [259] I say we were dissatisfied with having the people on strike, the workers on strike.

Q. But you did not order them to go back to work.

634

Mr. Sklar: That is objected to, Mr. Examiner.

Trial Examiner Korey: We will permit him, if he can, to qualify it.

A. The answer to the question is no.

Q. (By Mr. Mann) And you permitted them to remain on strike from August 2nd until what date?

Mr. Sklar: That is objected to as to form.

635 Q. (By Mr. Mann) Do you know until what time they were out on strike?

Mr. Sklar: That is objected to.

Trial Examiner Korey: Reframe it.

Q. (By Mr. Mann) Did you order them to go back to work at any time? A. No.

Q. When they went back to work, it was at their own volition, not any order from the Union, is that true?

Mr. Sklar: That is objected to as calling for a conclusion of the witness.

636 Trial Examiner Korey: Sustained as to that objection.

Q. (By Mr. Mann) Did you ever order them to go back to work at any time? A. No.

[260] Q. If so, the date— A. No.

Q. I show you Board's Exhibit No. 6 and ask you what time you first wrote that letter? A. Sometime on August 4th, I suppose.

Q. In the morning?

Trial Examiner Korey: If you know.

A. I suppose so, I do not remember.

Q. (By Mr. Mann) Let me read this to you. Did you read it when you got it? A. Oh, yes.

Q. You never answered it, though, did you? A. No.

Q. "Since our conversation with you Monday morning, August 2nd—"

Trial Examiner Korey: Do you want to get all that in?

Mr. Mann: Yes, it is a very important letter.

Trial Examiner Korey: It is part of the record.

(There was discussion off the record.)

Q. (By Mr. Mann) "—at which time we arranged a conference between your Union and our Company for Thursday, August 5th, at 10:30 o'clock a. m. A sit-down strike occurred in our plant at 12:30 P. M., August 2nd. You will note that the sit-down strike took place within a few hours after said conversation with you."

[261] That statement was true, was it not? A. No.

Q. That was untrue, the statement that "you will note that the sit-down strike took place within a few hours after said conversation with you"? A. There was a stoppage of work by the workers.

Q. Did you not just tell us a few minutes ago you spoke to Sanford at 10 o'clock in the morning on August 2nd? A. Yes.

Q. And stoppage of work or sit-down, whatever you want
640 to call it, occurred at 12:30? A. Stoppage of work occurred at 12:30.

Q. Two and one-half hours after Sanford and you talked on the telephone? A. Quite right.

Q. "In talking with you over the telephone and in conference with you, Mr. Galvin and other representatives of your Union previously, we were under the impression that the Union would not call any strikes pending negotiation."

The first part of that, that I just read, was also true, that a conference had been arranged for Thursday, August 5th, at 10:30 A. M., is not that true? A. In an off-hand manner,
641 yes.

Q. What do you mean by that? Did you not say a minute ago that Mr. Sanford had told you that August 5th, at 10:30 [262] A. M. he would further confer with you, and you said, "All right, we will meet then, unless we can meet earlier." Was not that your testimony? A. But when I first proposed that to Mr. Sanford, he wanted to know why we wanted to meet him, what for. And the whole thing was done in such a lackadaisical manner by Mr. Sanford, that it was kind of a broad—

Q. Was not the last thing you said to Mr. Sanford, when
642 you hung up the wire at 10:00 o'clock, on the morning of August 2nd—did you not say to him, "All right, we will meet you on August 5th, unless we can meet earlier"?

Were you not satisfied with his fixing August 5th, 10:30 A. M.? A. I ended the conversation with those remarks, that is quite true.

Q. Then he says in this letter, Board's Exhibit No. 6 "In view of the fact that we believe the Union called this

sit-down strike, we hereby cancel the conference arranged for Thursday, August 5th, at 10:30 A. M., and will not set any time for further negotiations until we have had a letter from you informing us as to whether or not this strike was instigated, ordered or approved by your Union, or any official or officials of the Union."

Did you read that part of the letter? A. Yes.

[263] Q. You have testified here under oath that your Union never ordered this strike? A. Right.

Q. Never instigated or approved the strike? A. That is right.

Mr. Sklar: That is objected to.

Mr. Graham: I object to that, that is not correct.

Q. (By Mr. Mann) Never instigated the strike?

Trial Examiner Korey: If the witness can answer, let him answer.

A. Will you put your question?

(The question is read by the Reporter.)

Q. (By Mr. Mann) You have testified here—is that true? You still want to say that?

Mr. Graham: I still object because the question is incapable of a specific answer, too indefinite.

Trial Examiner Korey: Let him answer in his own way with any qualifications he sees fit.

A. It is true the Union did not call the strike.

Q. (By Mr. Mann) So when Mr.—

Trial Examiner Korey: Is it also true that the
1646 Union did not instigate the strike?

The Witness: It is also true that the Union did not instigate the strike.

Q. (By Mr. Mann) Sanford says in his letter, "In view of [264] the fact we believe the Union called this sit-down strike, we hereby cancel the conference arranged for Thursday, August 5th, at 10:30 A. M. and will not set any time for further negotiations until we have had a letter from you informing us as to whether or not this strike was instigated, ordered, or approved by your Union, or any official
1647 or officials of the Union."

Why did you not write a letter putting yourself on record in answer to Mr. Sanford's request, in which he asked you to put that down in writing, that you had not called, instigated or ordered the strike?

Mr. Sklar: That is objected to.

Trial Examiner Korey: The letter does not say that.

Mr. Mann: Yes, it does.

Trial Examiner Korey: Read the letter.

Mr. Mann: It says, "In view of the fact we believe
1648 the Union called this sit-down strike, we hereby cancel the conference arranged for Thursday, August 5th, and will not set any time for further negotiations until we have had a letter from you, informing us as to whether or not this strike was instigated, ordered, or approved by your Union."

Trial Examiner Korey: Can you answer that?

A. Why was not it answered?

Q. (By Mr. Mann) Yes. A. It was unnecessary.

[265] Q. You see that part where Mr. Sanford says, "we believe that the Union ordered this strike"? A. Right, I see it. 64

Q. That you say was not true, the Union did not order this strike? A. Yes.

Q. Did you not think, as a Vice President of this Union, that you ought to go on record and put in writing that fact when the man asked you for a letter?

Mr. Sanford asked you for a letter. Did you not think it was the right thing to do?

Mr. Sklar: I object to the question, Mr. Examiner. 65

Trial Examiner Korey: On what ground?

(There was discussion off the record.)

Trial Examiner Korey: Mr. Mann, will you reframe that question in order to avoid any possible objections?

Mr. Mann: I might say I did not hear what he said.

(There was discussion off the record.)

Q. (By Mr. Mann) Was there, Mr. Anderson, any arrangement that the Union would not call any strikes pending negotiations with Mr. Sanford? A. In the meeting that I was at, question was not raised on the 29th. 65

Q. You remember that referred to in the letter here, do you not? [266] A. Yes.

Q. You did not deny that by any answer which you made, did you?

Mr. Sklar: The letter does not say there was such
652 arrangement made.

Mr. Mann: It says so, I read it.

Mr. Sklar: Under the impression that such a thing—

Mr. Mann: It says so,—"In talking with you over the telephone and in conference with you, Mr. Galvin, and other representatives of your Union, previously, we were under the impression that the Union would not call any strikes pending negotiations."

Trial Examiner Korey: That is Mr. Sanford's impression.

653 Mr. Mann: I am reading from the letter.

Trial Examiner Korey: Mr. Anderson says it is not his impression, there was no such discussion on that.

Q. (By Mr. Mann) But you did not put it in a letter in answer to what Mr. Sanford wrote you on August 3rd, say in words or such, that was not your understanding of any arrangement with you, Galvin, or your representatives, did you? A. I did not answer that letter.

Q. That is right. "In view of the fact that we believe the Union called this sit-down strike, we hereby cancel the
654 conference arranged for Thursday, August 5th, at 10:30 [267] A. M."

Those words indicated to you Mr. Sanford was accusing your Union of calling the sit-down strike, did they not? A. That is right.

Q. And you claim now, and you have sworn under oath here, that you did not call it. Why did you not deny that statement in an answer to Mr. Sanford's letter, Board's Ex-

hibit No. 6? A. For this reason: in my conversation with Mr. Sanford, on the telephone, about half-past one, on August 655
2nd, when he accused us of calling—accused the Union of calling a strike, I told Mr. Sanford then that the Union did not call the strike.

Later, in a conversation with Mr. Healey, I told him the same thing, and Mr. Sanford had been very well acquainted with the fact that the Union did not call the strike, and to write another letter making the same statement led me to believe that such a letter would only be used by his company with injury to the Union or workers involved.

Q. Were you still anxious on the morning of August 4th to negotiate? A. After reading that letter, you could not 656
expect that.

Q. What is that? A. After reading that letter, we did not expect—

[268] Q. I did not ask you about after reading the letter. I am asking were you still anxious on August 4th, when you got that letter, in the morning of August 4th, after you read it, were you still anxious to negotiate with Mr. Sanford on August 5th, in accordance with your arrangements which you had made on August 2nd?

Were you still anxious to carry on the meeting on August 5th?

657

Mr. Sklar: I object to the characterization of the word "anxious."

Mr. Mann: Desirous.

Trial Examiner Korey: Put it "desirous."

A. In my letter to Mr. Sanford, on August 2nd, I expressed the willingness of the Union to sit down and thresh this thing out. You have the exact wording of it there.

Q. (By Mr. Mann) That letter is Board's Exhibit No. 5,
6:58 you have just referred to? A. Yes.

Q. I am asking you now, the desire that you expressed in that letter of August 2nd, Board's Exhibit No. 5—did that desire still continue on the morning of August 4th, after you read this letter, Board's Exhibit No. 6, yes or no? A. Yes, the Union—may I qualify it?

Mr. Mann: Do not qualify it. The answer to that is either you were desirous or you were not.

[269] Q. (By Mr. Mann) Were you desirous?

6:59 Mr. Graham: The witness may, I believe, explain his answer after he makes it.

Mr. Mann: I object to the explanation.

Trial Examiner Korey: Let him make it.

A. The answer is yes.

Trial Examiner Korey: Make your answer now yes.

A. Yes.

Trial Examiner Korey: Counsel will take care of you.

6:60 Mr. Graham: Is the witness being denied the right to explain his answer?

Trial Examiner Korey: Not being denied the right at all. If you are going to break in too much with qualifications, you get it out on your redirect.

In order to avoid any practical future lengthy conversation on redirect examination, or taking in testi-

mony, tell us now what you wish to qualify that answer with.

The Witness: I answered yes because our Union is at all times ready and willing to negotiate with employers regarding the troubles of their workers, regarding a settlement of any strike situation, lock-out or lock-in.

Q. (By Mr. Mann) You knew, did you not, Mr. Anderson, if you were anxious to continue the negotiations on August 5th, at 10:30 A. M., in accordance with the arrangements made on August 2nd, you could have succeeded in doing that by [270] writing a letter to Mr. Sanford, explaining to him, informing him as to whether or not this strike was instigated, ordered, or approved by your Union or any official or officials of the Union.

Mr. Graham: I object because that question asks the witness to assume reaction to a statement he would make or letter which he would write.

Mr. Mann: The letter says if Anderson tells Sanford the Union did not call the strike, they would negotiate on August 5th. That is what the letter says.

Mr. Graham: It does not say—

Trial Examiner Korey: If the witness knows, let him answer. Do you know the question by this time?

The Witness: No. Would you mind reading it to me?

(The question was read by the Reporter.)

A. No.

Q. (By Mr. Mann) You did not know that? A. No.

Q. Did he not say in this letter that he would not consider any further negotiations until you put yourself in writing, disclaiming responsibility for calling this strike? A. I had already disclaimed responsibility for the Union, both with Mr. Sanford and Mr. Healey. Any further explanation was superfluous. It was just—

Q. When did you give that? [271] A. I have already brought that out twice, once in a telephone communication with Mr. Sanford—

Q. When was that? A. August 2nd.

Q. There was no strike on August 2nd, when you called up Sanford at 10 o'clock. You do not know what you are talking about. A. Oh yes, I do. I did not say 10 o'clock. I said August 2nd; August 2nd lasts 24 hours.

Q. I never heard about any conversation on August 2nd.

Mr. Graham: There was testimony as to two telephone calls.

Q. (By Mr. Mann) When did you telephone Sanford on August 2nd, after 10 o'clock? A. One, around about 1:30 on August 2nd.

Q. Did you testify to that on your direct examination? A. Yes.

Q. Do you recall it, Mr. Examiner, I do not know.

Trial Examiner Korey: Go ahead, what happened? Did you testify here you told Mr. Healey?

The Witness: Yes.

Trial Examiner Korey: At quarter to one or one o'clock when you were there?

A. Yes.

Trial Examiner Korey: I thought that was in the
[272] testimony.

Mr. Mann: I do not remember it.

Trial Examiner Korey: Not the telephone conversation.

Mr. Healey: He spoke with the police captain.

(There was discussion off the record.)

Trial Examiner Korey: Continue your answer, if you wish.

Mr. Mann: Go ahead.

Trial Examiner Korey: At half-past one you said you spoke on the telephone.

The Witness: To Mr. Sanford, told him I had heard there was some trouble in his plant, and expressed a willingness to do anything in our power in order to help the situation.

He said that the Union had called an illegal strike and I denied that. I said that possibly the workers had taken this means to express their dissatisfaction with the coercive tactics used by the Company's foreman or by the Company—I did not say foreman. Then he said he did not want to speak with me regarding the situation, but the police captain whom he had had to call in or had had called in, would like to speak to me.

Trial Examiner Korey: When was the other occasion?

A. 10 o'clock in the mornnig. This was at 1:30. In this con-

versation, as I brought out, I explained that the Union
670 [273] did not call the strike.

Trial Examiner Korey: Ten o'clock in the morning.

A. Ten o'clock that morning I had called Mr. Sanford regarding the copy of the transcript of our previous conference. Those were the only two conversations the same day.

Mr. Mann: May I have the last part of the answer read?

671

(There was discussion off the record.)

Trial Examiner Korey: When did you speak to Mr. Healey?

A. When I visited the plant at two o'clock the same day.

Q. (By Mr. Mann) August 2nd? A. Yes.

Q. But you did not want to put yourself in writing, did you, that the Union did not call the strike?

Mr. Sklar: That is objected to, Mr. Examiner. There is no necessity—

672 Trial Examiner Korey: He explained it, why he did not do it.

Mr. Mann: I would like to have—

Trial Examiner Korey: I sustain the objection. It has been answered two or three times.

Mr. Mann: Exception.

Q. (By Mr. Mann) You said that you sent a telegram to Mr. [274] Galvin on August 2nd? A. Yes.

Q. When he was in Richmond? A. Yes

Q. Advised him about the strike. Have you got a copy of that telegram? A. No, I do not think I have.

Q. Is there a copy in the file? A. No, I do not think so.

Q. You remember I asked Mr. Galvin this morning to produce a copy of the telegram. Were you here when I asked him that? A. Yes.

Q. He said he would. Has it been done? A. He said he would if there was a copy there.

Q. That is right. Did you look? A. Just a minute, please.

Q. Excuse me, go ahead. A. Mr. Galvin was in Richmond, Virginia, when the telegram was sent. I sent the telegram via Postal Telegraph over the telephone.

Q. Over the telephone? A. Yes, so there could have been no copy taken.

Q. Do you remember what you said in that telegram? A. The substance of it was there was a strike in the [275] National Licorice Company, 106 John Street, Brooklyn.

Q. That is all you said? A. I think that is all I said regarding the strike in the National Licorice Company.

Q. Just giving him the information that there was a strike? A. Yes.

Q. Did you ask him to give you any instructions as to what to do? A. I do not remember.

Q. You do not remember? A. No.

Q. You said in the telegram the workers had gone out on strike themselves? A. No, I did not make any qualification of what I said. I said there was a strike of the employes of the National Licorice Company.

Q. Did you say that the Union had called a strike at the plant of the National Licorice Company? A. That is all I said, what I said just now.

Q. Did you say in that telegram that the Union had called
676 a strike in the National Licorice Company? A. No.

Q. Mr. Anderson, at 1:30 you say you heard the workers had been imprisoned in that plant.

[276] Mr. Sklar: That is objected to.

Q. (By Mr. Mann) Locked in, if that is what you call it.

Trial Examiner Korey: Locked in.

Q. (By Mr. Mann) You still say that is what you under-
677 stood? A. Yes.

Q. At two o'clock you spoke to Captain Richter, right in the plant, is that right?

Mr. Graham: May I ask counsel to define his phrase, "right in the plant"?

A. That is not true.

Q. (By Mr. Mann) Where did you speak to Captain Richter? A. May I qualify that? I made a mistake. I misunderstood you. At ten minutes to one I heard there was trouble in the plant. At half-past one I phoned up Mr.
678 Sanford at the National Licorice Company. I then, at his request, visited the plant in order to speak with Captain Richter.

Upon my coming out of the plant, and walking around to the back entrance of that door-way, it was then I found the workers had been locked in, after my conversation with Captain Richter.

Q. Then the story about the ice cream man calling up on

the telephone is not correct? A. Yes, that is correct. It was brought out here by the Trial Examiner that I would be permitted to hearsay evidence. [277] You asked me to qualify how the information got to the Union office. That I did.

Trial Examiner Korey: You mean the ice cream vendor called?

The Witness: One of the workers that was locked in called Mr. Bicariello.

Q. (By Mr. Mann) When you spoke to Captain Richter on the telephone, Anderson, is it your story now that you knew the workers had been locked in at that time? A. No, I did not know that.

Q. You did not? A. No.

Q. When did you find that out? A. After I left Captain Richter.

Q. Did you call Captain Richter or call the police to try to correct this terrible thing that was happening to the workers up there?

Mr. Sklar: I object to the form of the question.

Trial Examiner Korey: I object to the form of the question, the last part.

Mr. Sklar: Why does not Mr. Mann confine himself to the issue, instead of making characterizations and things like that?

Trial Examiner Korey: Reframe your question.

Mr. Mann: If this is what happened, it was a terrible [278] thing.

Trial Examiner Korey: Leave out the terrible thing part of it, reframe the question in the proper manner, Mr. Mann.

Q. (By Mr. Mann) Did you telephone back to the police
682 when you heard the workers had been locked in the plant? A. No.

Q. One more question, Mr. Anderson. A. Yes.

Q. Did you address the workers on July 29th at any meeting? A No.

Q. What is that? A. No, I do not think so.

Q. Search your recollection thoroughly before you answer. Were you ever in Lenruth Hall? A. Yes, I have been in Lenruth Hall.

Q. Were you there on July 29th? A. I do not recall having been there on July 29th.

683 Q. Were you there on July 30th? A. No.

Q. On the 31st? A. No.

Q. When were you there? A. I could not give you the exact date or dates.

[279] Q. Do you remember—I want to recall to you that your memory as to hours—as to ten minutes to one, half-past one, and a quarter to two—you remember the hour and the minute on some things very clearly, and you cannot remember when you addressed the workers of the National Licorice Company in Lenruth Hall. A. No.

Q. Would you say you addressed them at any time prior to August 2nd? A. I do not remember.

684 Q. That is the best answer you can make? A. Honestly, it is the best answer I can make.

Q. Do you keep a diary as to the speeches you make as Vice President of the Union? A. No.

Q. No record of where your meetings are and when they are and what time they are? A. The records are taken at that meeting, they are kept, of course.

Q. Are records taken of every meeting? A. Generally, yes.

Q. Did you ever take a record about a meeting of the National Licorice Workers? A. Yes, I think there is such records.

Q. Where is that record? [280] A. I do not know.

Q. You do not know? A. It would be in the Union offices, I imagine.

Q. When did you see it last? A. I do not know.

Mr. Mann: That is all.

(There was a five-minute recess.)

(There was discussion off the record.)

Redirect Examination:

Q. (By Mr. Graham) Mr. Anderson, some question has been raised as to what you were doing at the conference held at the plant and what other representatives of the Union were doing there, if they did not talk.

I would like to ask you what is the practice of the Union whenever several Union members attend a conference? Do they all talk when it occurs to them, or is there some definite practice and reason for it?

Mr. Mann: I object, that is immaterial, what the practice is and what the Union does.

Mr. Graham: If there is a reason for the practice and the practice exists, it will help to explain the ambiguity which crops up.

Trial Examiner Korey: I will allow it. Mr. Mann

questioned him many—questioned him, himself, for
688 the reason he did not say anything or the other fellow did not [281] say anything.

Mr. Mann: I object to the practice, Mr. Examiner.

Trial Examiner Korey: Reframe your question.

Q. (By Mr. Graham) I will put it in a different way—Counsel for the company has examined you as to your apparent failure to take a very active part in these conferences. Up to the present time you have had no opportunity to explain why you did not take a particularly vocal part in this particular conference held at the plant.

689 I would now like to ask you to explain the reason for that. A. It is the practice of the representatives of this Union, when going into conference, that there should be only one spokesman and if the other witnesses there for the Union have any thoughts they wish expressed there, they will acquaint the delegate spokesman by means of a slip of paper on which is written their questions and passed along to that spokesman.

That is the practice of the Union and then in future regular meetings, all these things are discussed by all the witnesses there at that meeting.

Q. So that although you do not actually engage, all of
690 you, in the discussion, unless you do so by the use of slips of paper, or unless a critical emergency arises, you do have a subsequent conversation among the people who were [282] present in the executive session and discuss thoroughly the issues that arose. A. Yes, that is right.

Q. The question has been raised as to the location of the Brooklyn office of the Union, and whether or not a Union

representative who was at that Brooklyn office was at the plant.

You have testified that the address of the Brooklyn office is 194 Park Avenue. I would like to ask you approximately how far that office is from the plant? A. About a mile and a half away from the plant.

Q. In the discussion of the conference held in the office, the issue has been raised as to whether or not you knew from what paper Mr. Sanford was reading, and whether or not you knew that Mr. Sanford had a copy of the Union contract before him, or that he had a copy of some other paper before him.

I would like to have you describe in a few words the physical position which you and the other representatives of the Union and the Company took, and whether or not you could easily see the nature of any paper that Mr. Sanford might be holding and reading from. A. The conference was held in a room in which there was a large table, on one side of which sat myself, Mr. Sklar, Mr. Galvin and Mr. Bicariello, and on the other side of the [283] table, about three or four feet away, Mr. Smiley—not, no, Mr. Healey, Mr. Sanford sat at a desk to the left, about six or seven feet away, my left-hand, on the left side of me sat Mr. Smiley, I think, as near as I recall.

Mr. Sanford had a paper in front of him. That is all I could see, and he was leaning on his elbow reading from the paper. It was impossible for me to see just what he was reading from, since it was that distance away.

Q. The issue has been raised whether there was a discussion, whether there was bargaining there. From your testimony, I assume that your attitude in this:

At this conference, after the preliminaries had been got-

ten through and excepting the time when you went out to
694 look at the display, Mr. Sanford read from what appeared to be a paper before him on the desk, and continued reading straight through the paper; and thereafter, when any question was raised, Mr. Sanford, after perhaps a cursory discussion, returned to the paper or after perhaps no discussion, returned to the paper and reread again things he had read previously thereto.

Also, that as far as departure from this paper and as to a bargaining process of give and take, and discussion made concerning it, that did not exist during this conference. A. There was no give and take discussion. When any [284] point
695 need clasification, Mr. Sanford may have remarked, "Don't you understand English?" and reread such a paper.

Q. Three letters have been introduced in evidence, two of which, Board's Exhibits No. 5 and No. 6 are a letter which you wrote to Mr. Sanford and a letter which Mr. Sanford wrote to you. There has been a discussion of the latter of these two letters, the one Sanford wrote to you, and the issue has been raised, why was there no reply to this letter.

You have stated in your testimony that Mr. Sanford had been informed by telephonic communication and Mr. Healey had also been informed by direct conversation that the Union had not called the strike.

696 Is that correct? A. That is true.

Q. I would like to ask you, in this connection, what reason the Union had for being reluctant to write a letter to Mr. Sanford saying on paper that the Union had not called or instigated, or did not approve of the strike, as requested in Mr. Sanford's letter. A. We felt as Mr. Sanford had been previously informed twice regarding the attitude of the Union to the strike, that any written statement by the Union

could have been used by Mr. Sanford for the purpose of publicity, which would have put the Union in an unfair position. 697

[285] Q. You were, therefore, afraid that Sanford might make use of that letter in such way as to indicate to the strikers that their only Union was not supporting them in their strike, is that correct? A. That is what I mean.

Q. There has been reference made to the communication you sent to Mr. Freund. I would like to ask you why you wrote a letter to Mr. Freund.

Mr. Mann: I object to that.

Mr. Graham: My purpose is to show the Union's desire was to conciliate to avoid the type of violence 698 which may result from strikes.

Trial Examiner Korey: I think the letter speaks for itself, Mr. Graham. I will sustain the objection. The letter speaks for itself.

(There was discussion off the record.)

Q. (By Mr. Graham) You have been asked during cross-examination questions as to whether or not you have addressed meetings of the employes of this particular company on certain specified things.

I would like to have you explain your answer that you were unable to recollect such definite speaking engagements. 699 A. I am unable to recollect for the reason I speak at so many meetings, almost every night in different trade unions, and similar situations. That is, in other groups of workers [286] I address meetings almost every night and it is difficult for this reason to remember exactly on what night I was there, or where I was on a certain night.

Q. Will you tell me what further action you took to at-

tempt to mediate, to attempt to terminate the strike through
700 negotiations which would be satisfactory to the employer and to the Union?

That is, to mediate the strike and settle it? Did you take any further steps aside from the letter to which I have referred, sent to Mr. Freund?

Trial Examiner Korey: If you remember.

A. I think I requested through a telegram to Mayor LaGuardia in order that he intercede to effect settlement.

701 Mr. Mann: I object to that and move to strike it out.

Trial Examiner Korey: You will take it.

Q. (By Mr. Graham) I have here a Postal Telegraph blank with a message printed thereon and hand it to you and ask you if it refreshes your recollection of the telegram to which you referred. A. That is the telegram which I sent to Mayor LaGuardia in order to see if he could help to mediate the settlement of this strike.

Trial Examiner Korey: What date was that, do
702 you recall?

A. That was on August 6th.

[287] Q. (By Mr. Graham) Did the Mayor reply to your telegram? A. Yes.

Q. I am handing you a letter which purports to be such a reply and ask you to identify it, if you can. A. That is the reply I received.

Q. Did you also communicate with any superior officer in your Union in an attempt to settle the controversy?

Mr. Mann: I object to that.

A. I did.

Q. (By Mr. Graham) With whom did you communicate? A. I communicated with the eastern representative of the Bakery and Confectionery Workers International Union, Brother Kloeppel.

Q. What did you ask him to do?

Mr. Mann: That is objected to.

Trial Examiner Korey: Give us the substance, if you can.

Mr. Mann: How is that binding on us, Mr. Examiner, what he did? He could have answered our letter of August 2nd and we told him we would confer with him if he had put in it writing that he did not call the strike. That is what he should have done, instead of writing to the Mayor and Mr. Freund and Mr. Kloeppel.

Mr. Graham: It is in no way binding upon the company, but it does indicate the desire of the Union to negotiate [288] and settle the strike.

Mr. Mann: It does not indicate that all, Mr. Graham.

Trial Examiner Korey: Mr. Graham, get as a result of such communication, what happened.

Q. (By Mr. Graham) Did any action result from your communication with the Union official? A. The efforts that

he made met with an unsatisfactory return from Mr. San-
706 ford.

Mr. Mann: I object to that as being a conclusion.

Trial Examiner Korey: Do you know of your own knowledge whether he got in touch with Mr. Sanford?

The Witness: He told me so.

Trial Examiner Korey: We will allow it. Take your exception, Mr. Mann.

Mr. Graham: That is all.

707 *Recross Examination:*

Q. (By Mr. Mann) Did you ever send a copy of these things, Mr. Graham just referred to, to the National Licorice Company? A. No.

Q. They did not know what you were doing, did they? A. I do not know.

Q. You had a simple method of settling this thing on August 5th, by writing a letter such as Sanford asked you to write, indicating that you did not call this strike. [289] Then he was ready to confer with you on August 5th. You did not do that, did you? You did not do it. A. Since—

708 Q. You did not do it.

Trial Examiner Korey: Did you write?

The Witness: I did not write.

Mr. Mann: That is all.

Trial Examiner Korey: All right.

Redirect Examination:

Q. (By Mr. Graham) Did Mr. Freund tell you he got in touch with the National Licorice Company? A. Yes.

Q. Did the Company, therefore, know of your efforts to mediate through Mr. Freund? A. Yes, they did.

Mr. Graham: That is all.

Recross Examination:

Q. (By Mr. Mann) Did Mr. Freund ever send you a copy of the letter he wrote to the National Licorice Company? A. He told me.

Q. Please— A. No.

Q. Did he ever give you in writing the letter—did he ever send you a letter indicating that he had made a telephone call to the National Licorice Company? [290] A. Not in writing.

Q. No. Did he say to whom he talked in the National Licorice Company? A. Yes, he spoke to Mr. Sanford.

Q. He said he spoke to Sanford. A. Yes.

Q When did he tell you that, over the phone? A. Over the phone he told me that, yes.

Trial Examiner Korey: The next witness, please.

(Witness excused.)

(There was discussion off the record.)

Trial Examiner Korey: We will adjourn until 9:30 o'clock tomorrow morning.

(Whereupon, at 5:00 o'clock P. M., October 14th, 1937, the hearing was adjourned to 9:30 o'clock A. M., October 15, 1937.)

[291] BEFORE THE
NATIONAL LABOR RELATIONS BOARD
712 SECOND REGION
Case No. II—C—740.

In the Matter of
NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND
713 VICINITY.

Room 419, Old Post Office Building.
New York, New York,
Friday, October 15, 1937.

The hearing was resumed, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

H. R. KOREY, Esq.,
Trial Examiner.

Appearances:

714 CHARLES E. GRAHAM, Esq. (233 Broadway, New York, New York) on behalf of the National Labor Relations Board.

KOTZEN, MANN & SIEGEL, Esqs. (51 Chambers St., New York, New York) attorneys for Respondent, by
ABRAHAM MANN, Esq., and
JOSEPH YASPAN, Esq., *of Counsel.*

KALMAN SKLAR, Esq. (521 5th Ave., New York, N. Y.) appearing for Bakery & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity.

WILLIAM E. GALVIN (245 W. 14th St., New York, N. Y.) President of Bakery & Confectionery Workers International Union of America, Local 405.

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[292] PROCEEDINGS

Trial Examiner Korey: Gentlemen, you may proceed.

JAMES LANDRISCINA a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Graham) By whom are you employed, Mr. Landriscina? A. By National Biscuit Company.

Q. Are you connected with the Union? A. Yes.

Q. In what capacity are you connected with the Union? A. Well, I am an officer of the Union.

Q. What office do you hold in the Union? A. Sergeant-at-Arms.

Q. Sergeant-at-Arms? A. Yes.

Q. How long have you been connected with the Union? A. Since 1934.

Q. Since 1934? A. Yes.

718 Q. And you have been connected with the Union in that capacity since 1934? A. Yes.

Q. When did you first have anything to do with the Union in the National Licorice Company plant? A. Well, since I was—well, I worked there 15 years.

Q. When did you first— A. Oh, it was in July when I started.

Q. You started working on the Union in the National Licorice Company in July? A. Yes.

Q. What sort of work did you have to do? A. Organizing the plant.

719 Q. You were an organizer of the plant? A. Yes.

Q. Are you familiar with the names of the individuals in the plant who have joined the Union? A. Yes.

Q. When you organized the plant, what steps did you take in connection with the employes desiring to become members of the Union? A. Well, we located at 194 Park Avenue, Brooklyn, and I had a few people come down to see me, that they wanted to be organized, and so I made them applications and then a couple of days more they will come down to make the applications.

Mr. Mann: When was this, Mr. Landriscina?

720 Trial Examiner Korey: I think he said July.

[294] The Witness: In July.

Mr. Mann: When in July?

The Witness: I believe it was—I started July 7th.

Mr. Graham: He started July 7th.

Q. (By Mr. Graham) And did the employes sign the application cards in your presence? A. Yes.

Q. All of them signed the cards in your presence? A. Yes.

Q. When did you first count cards and realize that you had a majority of the employees as applicants? A. I believe it was July 15th.

Q. On July 15th? A. Yes.

Q. Did you count the cards then? A. Yes.

Q. How many cards did you have at that time? A. 100.

Q. 100 cards? A. Yes.

Q. Do you have the application cards with you? A. Yes.

Q. And on the 15th you had 100 cards? A. Yes, sir.

Q. Have you gotten applications since that time? [295] A. Yes.

Q. Did the Union have a majority of these application cards on the day previous, the 14th of July, the day when the telegram was sent to the Company? A. Yes.

Q. Had a count been made at that time, too? A. Yes.

Q. But the count to which you refer was made by you on the 15th and indicated the presence of 100 cards of applicants? A. Yes.

Trial Examiner Korey: When you say cards, do you mean—

The Witness: Applications.

Mr. Graham: I should have said, applications instead of cards throughout the examination so far.

Q. (By Mr. Graham) Are those the applications which you have with you there (indicating)? A. Yes.

Mr. Graham: I would like to offer those applications in evidence as Board's Exhibit No. 8.

Mr. Mann: As of what date do you wish to offer

them? You have a man testifying here up to July
724 15th.

Mr. Graham: I offer the applications as to the dates which appear upon the applications.

Mr. Mann: Have you got a blank one for me?

[296] Mr. Graham: You may have this one if you wish.

(Handing paper to Mr. Mann.)

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

725

Trial Examiner Korey: Back on the record. Proceed.

Mr. Mann: Before making an objection to this, I would like to have some testimony here, if this man can tell us, telling us on the record how many of these application blanks are here now, which he is purporting to offer in evidence.

How many are signed on the different dates? I am not going to stop now unless the Examiner asks me to make this count myself. I would like to have the record show how many are dated July 14th; how
726 many are dated July 15th, if any; how many are dated July 20th, if any, so that we can have an intelligent estimate and something on the record to indicate just what this is all about, and I presume there are over 100.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record. Proceed.

Q. (By Mr. Graham) Mr. Landriscina, you testified that you are a part-time employe of National Biscuit Company? A. Yes.

Q. I would like to have you explain that. Are you [297] presently today and tomorrow and the last week actually appearing at that plant, or were you employed there up to a fairly recent time? A. I was up to the first of the year.

Q. You were up to the first of the year? A. Yes.

Q. And now you are working as an organizer of the Union? A. An organizer of the Union.

Q. And as soon as you conclude your activities with the Union you will return to the National Biscuit Company? A. I don't know; it depends upon whether there is work.

Q. It depends upon whether or not they have work for you to do? A. Yes.

Q. When did you first learn of the strike that had been called at the National Licorice Company plant on the 2nd of August? A. I believe it was about twenty minutes to one.

Q. And who told you, or by whom were you informed? A. I was at 194 Park Avenue. I was down to 194 Park Avenue, and on that day somebody called up and I answered the phone, and I heard that they had trouble.

So I went down to the National Licorice, to go down to see if they had trouble, so I told Brother Picariello, so Brother Picariello got in touch with Mr. Anderson, and he [298] told me to go to the plant, so I went down to the plant, and when I went down to the plant, I seen that they had all stopped work.

Q. About that time did you go to the plant? A. I believe
7730 it was about one o'clock.

Q. You believe it was about one o'clock. And when you went to the plant, what did you see? A. I tried to see some of the working people, and I couldn't see anybody so I went to the back.

Q. Was the plant locked? Where did you go first, to the front door? A. I couldn't see nobody outside.

Q. You couldn't see anybody from the outside? A. No, so I went in the back of the building.

Q. Yes. A. And I seen all the people were standing out around the shipping branch.

7731 Q. Is that inside? A. Big gate, outside where you could see them.

Q. You could see them through the gate? A. Yes, so I asked Mr. Nick Andretti what happened. Then he told me they all stopped working down there, because they wanted to know if we had any conference with the company. I told him that we don't know anything about it; I said we were in conference, I think it was, a week before—think [299] it was on Thursday or something like that. So finally they told me that they was locked in.

Mr. Mann: Who said they were locked in?

7732 The Witness: Mr. Andretti and a couple of more girls.

Q. (By Mr. Graham) Two of the girls and Nick Andretti. Do you know the names of the girls who told you? A. I am notified one is named Carmella.

Q. Would that be Carmella Tesora? A. Tesora.

Q. And the other one? A. I don't know her name.

Q. But you would recognize her? A. I would recognize her the instant I seen her.

Q. And after they told you that the employes were locked in— A. So I called up Picariello again, and he told me, "I got in touch with Mr. Anderson," that Mr. Anderson will be right down to the plant, so he wanted me to stay down to the plant until Mr. Anderson would be down there.

Q. Yes. A. Then Mr. Anderson came down, he went in to the Company and asked what happened down there, and I told him. I said, they just stopped work. He said, "Why?" and I told him they were supposed to wait here, because the office told them "Rush over here and rush over there," and was giving them a [300] lot of working up and down, so finally they stopped work, so then he said, "All right, I will go in and see Mr. Sandford."

So he and Mr. Picariello went in to the plant.

Q. Anderson and Picariello went into the plant? A. Yes.

Q. And then you waited around there, or did you go back to the office? A. No, I waited down there.

Q. At the plant, outside? A. Yes.

Q. How long was it before anything else happen, or when did the next event occur? A. I believe it was during that half hour.

Q. You sat around about a half hour or so? A. Yes.

Q. What happened then? A. Then Mr. Anderson came out, and he told me that Mr. Sandford—he had been in talking with him.

Mr. Mann: I object to what Anderson told him.

Trial Examiner Korey: As a result of that conversation, what happened?

The Witness: Well, he said—

Trial Examiner Korey: Don't tell us what Anderson told you.

[301] The Witness: Well, then, I stayed down there.

Mr. Graham: If it is offered not for proof of what had happened, but simply as proof of what Anderson told him, I think it is permissible.

Mr. Mann: Anderson testified here already. He told you what the result was. It is not binding on the Nation Licorice Company what Anderson said to this man, Landriscina.

Q. (By Mr. Graham) After you spoke with Mr. Anderson, what did you do then? A. Then it was about four o'clock, when people came all out.

Q. Sometime around four o'clock? A. Between four and four-thirty, people walked out.

Q. What did you do? A. Then I formed a picket line downstairs and I kept that picket line for about two weeks, and it was going over nice and peaceful, so after two weeks I met Mr. Healy—he came out; he came out and talked to the picketers.

Q. Were you present when he talked to them? A. Yes, I was right there.

Q. Could you hear what he said? A. Yes, he was trying to tell the people on the picket line that there was no way they could win this strike, because the Union was no good. They was a racketeer and they [302] were satisfied to close up the plant rather than talk to the Union.

Mr. Mann: What date was it that Mr. Healey said these things, Mr. Landriscina?

The Witness: Two weeks later.

Mr. Mann: Two weeks later?

The Witness: Yes. 739

Mr. Mann: On August 16th.

Mr. Graham: About the 16th, yes.

The Witness: So then I told the girls to keep on doing the work, their picketing, and not worry about what Mr. Healey said.

Q. (By Mr. Graham) Yes. A. And so finally I heard somebody saw a gorilla down there. That is what I call them.

Q. By gorilla what do you mean? A. A gorilla is a company guard to beat them down.

Q. Company guard? A. Yes. So they were trying to talk 740 to the girls.

Q. Who, the guards? A. Guards were—

Q. The guards were talking to the girls who were picketing? A. Yes.

Q. Were you present near any conversation between a guard and a picket? [303] A. No.

Q. You were not present at any such conversation? A. No, not that time, but a week later.

Q. Then a week later. Was this approximately two weeks after the time Mr. Healy came out? A. Yes.

Q. That would be approximately the end of August? A. I believe so, yes. 741

Q. Is there any way in which you can fix that date in your mind, the date when you saw the guard? A. I believe it was around August 19.

Q. Around August 19? A. Yes.

Q. It would then be only a few days after you heard Mr. Healy's conversation with the girls? A. Yes.

Q. A few days later you then heard a guard talking— A.
742 Talked to this girl, Carmella.

Q. He talked to Carmella Tesora? A. Yes, and he told them they would like to work with them, Mr. Healy was satisfied to take them back, and they would be better off if they were to form a Company Union.

Mr. Mann: Just a moment, I object to what a guard told this girl Tesora. We are not bound by what he said. He is not our agent to bind us by any statement like that, that [304] they would be better off if they formed a Company Union. Who is the man, what is
743 his name, how can we identify him? How do we know he was a guard? It might have been a man walking in the street.

Are we to be bound by that kind of—

Mr. Graham: The fact that there was a guard there, which will be corroborated by subsequent testimony, is a sufficient basis for the witness' statement, what the guard said in the witness' presence.

Mr. Mann: Even assuming that that man who spoke was a guard, he has no authority to bind us on such a statement, assuming that he made that statement.

Mr. Graham: If the guard lacked any authority to
744 make statements in behalf of the company, that can be established by the company.

Trial Examiner Korey: Subject to connections we will allow it.

Mr. Mann: I except. Can we get a name?

Q. (By Mr. Graham) Do you know the name of the guard? A. I know his first name.

Q. What is his first name? A. Joe.

Q. What did the guard say to Carmella Tesora? A. He said 745
that Mr. Sanford was willing to make any kind of agreement with the working people—

[305] Mr. Mann: I object to this whole line of testimony, of what this unidentified man Joe said to this Carmella Tesora girl, on the ground that it is not binding upon us.

It doesn't prove that the man had any authority to make these statements, if they were made, and it is clearly inadmissible.

Trial Examiner Korey: Subject to connection, we 746
will allow it, and you can have your exception to this line of testimony.

Q. (By Mr. Graham) What did the guard then say to Carmella Tesora? A. He said to Carmella, he said, "Now"—he says, "Mr. Sandford wants to talk to you girls, to take up this committee proposition. Come inside; he is willing to talk to you people."

So I said to—she came over and told me, so I said, "I tell you what to do. You go over and ask Joe who told him to come out and ask you," so she went over and Joe said Mr. Sandford sent him outside just for that particular mat- 747
ter.

Q. She said that Mr. Sandford had asked him, the guard, to go out and make that statement? A. Right.

Q. Was there a saloon near the National Licorice Company? A. Yes.

[306] Q. Were you ever in that saloon? A. I used to go there to call up headquarters.

Q. Will you state anything which may have happened in
48 that saloon? A. I went in there a couple of times and I seen Mr. Healy buying beer for some girls and some of the men.

Q. Were these girls and men employes who were then out on strike? A. They were on strike.

Mr. Mann: May I have the names of these girls and men that Healy bought beer for?

Q. (By Mr. Graham) Do you know the names of the girls and the men? A. Well, I know Carmella was there and
49 that girl named Anna, and another girl named Helen.

Q. Anna Dunn or Anna Trunitz? A. Anna Dunn and Helen.

Q. Approximately when did this occur? Was it after the time when the guard came out on the instructions of Mr. Sandford, or before that time? A. It was after that; I think it was the following day.

Mr. Mann: That is August 20th?

Mr. Graham: That would be August 20th.

The Witness: August 21st.

Q. (By Mr. Graham) The 21st, as nearly as you can
50 remember [307] it? A. As nearly as I can remember it.

Q. You are not positive of the actual dates, are you? A. No, I am not positive, but I just figured between the weeks.

Trial Examiner Korey: That is on a Saturday, the 21st, is it? Let's fix the date.

The Witness: Saturday.

Q. (By Mr. Graham) On Saturday, the 21st, this occurred? A. Yes. 751.

Q. Did you hear Mr. Healy or a guard in a conversation with a picketer make any reference to the possibility of moving the plant of the National Licorice Company? A. Yes.

Mr. Mann: I object to that unless there is—unless the picketer is identified.

Q. (By Mr. Graham) Do you know the name of the picketer to whom the statement was made? A. Well, one was Carmella.

Q. Carmella Tesora? A. Yes, and another one was a girl named Helen. 752

Q. Do you know the names of any others who were there at the time and heard the conversation? A. No, that was the only two.

Trial Examiner Korey: When was that?

[308] The Witness: That was on the following week of the—I think that was on Monday.

Trial Examiner Korey: The following Monday, August 23rd?

The Witness: Yes.

753

Q. (By Mr. Graham) That was on the subsequent Monday, after the incident occurred in the saloon? A. Yes.

Q. And who made these statements.? A. Mr. Healy.

Q. What did Mr. Healy say? A. Well he said that if they would go back to work, they would be in the plant, they would go back to work, that they were going to close out the plant and take the machines down to Philadelphia.

Q. Take the machinery to Philadelphia? A. Yes, that they would never recognize the Union.

Q. He stated that they would never recognize the Union? A. Right.

Mr. Mann: What date?

Trial Examiner Korey: August 23rd.

Q. (By Mr. Graham) Were any of the girls who were picketing the plant arrested? A. Yes, they had a few girls arrested.

Q. What happened to those girls? [309] A. That was on Monday when they opened the plant.

Q. What date? A. Well, after four weeks.

Q. Monday, the 30th? A. I believe that is when they opened the plant, on August 30th.

Q. And it was on that day that several of the girls were arrested? A. Yes.

Q. Where were those picketers taken? A. They were taken down to the 84th precinct.

Q. To the 84th precinct. Did you go to the 84th precinct? A. No, I called up Picariello.

Q. You called Picariello and then what did you do? A. Yes, I did.

Trial Examiner Korey: Then what happened?

The Witness: Then we got in touch with the New York—with the lawyer, and we went down there and got them out.

Q. (By Mr. Graham) So that you went down to the court room after calling Picariello? A. Yes.

Q. And after getting in touch with the lawyer? A. Yes.

Q. When you were in the court-room, whom did you see 757
there besides the girls, or aside from the girls who had [310] been arrested, aside from Picariello and the lawyer. Was anyone else there? A. That was just when they were supposed to appear before the court; I think it was a couple of days later.

Q. They were supposed to appear before the court a day or two later? A. Yes.

Mr. Mann: Who are these girls?

Q. (By Mr. Graham) Do you know the names of the girls 758
who were arrested? A. I think we had a list over there. If I can get it—

Trial Examiner Korey: If the list will refresh your recollection, you can have a look at it.

The Witness: I can't get them now; I thought I had them.

Q. (By Mr. Graham) Do you have the list now? A. No, I couldn't get it.

Mr. Mann: What is the purpose of proof about these 759
arrests; I don't see anything in the complaint about it.

Mr. Graham: It is to establish subsequent conversation.

Mr. Mann: Bring out the conversations; who made these conversations? Most of them were made by police officers, I understand.

Mr. Graham: That is what I was doing when you asked me [311] to get the names.

Mr. Mann: All right.

760 Q. (By Mr. Graham) Now, when you were in the court-room, either on the date when the girls were first brought there, or on the subsequent date, a day or two later, when they were asked to appear, was Mr. Healy present? A. Yes.

Q. On which occasion was Mr. Healy present? A. Mr. Healy was present all the time.

Q. He was present on both occasions? A. Yes.

Q. Did you overhear any conversation which Healy had with these girls? A. I heard Mr. Healy say he was willing to drop the charge if they were to go back to work.

761 Q. He said he would have the charges dropped if the girls went back to work? A. Yes.

Q. At which time did Healy make this statement, the first time when they appeared, or the second time? A. The second time.

Q. He made the statement at the second time, which would be about the 2nd of August?

Trial Examiner Korey: September.

Q. (By Mr. Graham) September? [312] A. September, yes.

762 Q. About the 2nd of September? A. Yes.

Q. And what day is that? A. It is on Thursday.

Q. Were these statements repeated at a later time in the picket line? A. All the time.

Mr. Mann: By whom?

The Witness: By Mr. Healy.

Q. (By Mr. Graham) They were repeated by Mr. Healy

on the picket line at subsequent dates? A. Yes, and I went to—I was around there about the girls outside of the court, 763
when Mr. Healy said to the girls, "Now, you don't have to stay with the Union; you can come back to work. You will have quite a few dollars if you went back to work, so why don't you go back to—" so I was right alongside the girls and I told Mr. Healy that he should mind his business.

He said it was better for them if they would go back because he would never recognize the Union, because we were only a bunch of racketeers, and he never had any use for the Union.

Q. When did this conversation occur? A. I told him that if he thought we were racketeers he [313] should call 764
up some Union and also my company and find out if we were racketeers or not.

Q. You suggested that he call up some of the companies which you previously organized and ascertain as to the Union's conduct? A. Yes. Then he told some of the girls that he will never take Nicky Andretti and Jim Blasi and he would never take Carmella Tesora.

Q. And when did he make that statement, do you recall? A. That was outside the plant.

Q. That was outside the plant? A. Yes.

Trial Examiner Korey: What do you mean? 765

The Witness: He will never take them back.

Trial Examiner Korey: To work?

The Witness: So I say, "Why?" and he said, "Because they were only a bunch of gorillas." So I told him, "If they were a bunch of gorillas, why did he let those people work in the plant seven years, and now he was calling them gorillas."

Mr. Mann: What date was this?

The Witness: I don't remember the date, because I have so many things in my mind, I can't remember the date.

Trial Examiner Korey: Give us approximately; how soon after that court incident did this happen?

[314] The Witness: I believe it was in September; I believe it was the third week or fourth week in September.

Trial Examiner Korey: Latter part of September?

The Witness: Yes.

Q. (By Mr. Graham) I would like to remove any confusion which may have arisen in your last answer; you say the third or fourth of September; do you mean the third or fourth week in September? A. I said the second or third week.

Trial Examiner Korey: He said the second or third week in September.

The Witness: We went to the courts—

Mr. Mann: I notice, Mr. Examiner, that as this man is testifying, Mr. Galvin is sitting there and he is telling Mr. Graham to inform him and to correct his testimony.

Trial Examiner Korey: Well, as a matter of fact, I didn't hear him say anything.

Mr. Mann: He said something, he just said something to Mr. Graham.

Trial Examiner Korey: He may have said something to Mr. Graham—

Mr. Mann: I ask that this witness be left alone.

This is testimony under oath, and I don't want anybody to prompt him. 769

Mr. Galvin: As a representative of the union and [315] having a pretty good knowledge of most of these things, they having been reported to me at one time or another, and as I have noticed both counsel are prompting this man, and there are many, many things that have been asked of him, I don't know what the reason is, if there is any objection, but at any rate I spoke to counsel here to the effect that too much information is being elicited; the witness gets confused.

He said the third or fourth week— 770

Mr. Mann: You said the third or fourth week.

Trial Examiner Korey: He said the third or fourth week when he testified.

Mr. Mann: That indicates his testimony is inaccurate and you are correcting him.

Mr. Galvin: He is confused.

Mr. Mann: This is testimony under oath.

Mr. Galvin: If he is confused, it is up to me—

Trial Examiner Korey: Mr. Galvin, you sit closer to Mr. Graham, and if you have information you believe should be elicited, you ask Mr. Graham.

Mr. Galvin: Aren't I permitted to ask Mr. Graham? 771

Trial Examiner Korey: I just said you are.

Mr. Graham: I think it may be best for me to show the slip which was handed to me so that counsel can see the slip bearing the statement just related by Mr. Galvin.

[316] Trial Examnier Korey: It is not necessary. He has a right to confer with you, as a representative of the union.

Q. (By Mr. Graham) Have you separated the applications
772 which you have before the court in dates? A. Yes.

Q. Can you tell us the number of applications received with each of the dates which they bear? A. July 10th, fourteen applications; July 12th, twenty-seven; July 13th, Fifteen; July 14th, forty-three; July 15th, ten; July 21st—

Mr. Mann: What date is that?

Mr. Graham: July 21st.

Trial Examiner Korey: He means, July 20th, one.

The Witness: July 20th, one; August 3rd, ten.

773 Q. (By Mr. Graham) And that includes all of the applications which you have here? A. So far, yes.

Q. That includes all the applications which you have here on this list? A. Yes.

Mr. Graham: I would again make the offer of these cards in evidence as Board's exhibit No. 8.

Trial Examiner Korey: Mark them in evidence as exhibit 8, collectively.

[317] (Thereupon the documents above referred to were marked as Board's Exhibit No. 8, collectively, in evidence.)

774

Mr. Mann: We have an objection to that, Mr. Korey.

Trial Examiner Korey: At this time, after they are marked into evidence?

Mr. Mann: I object to these applications on the ground that no signature there has been identified by anybody up to the present moment.

Trial Examiner Korey: He says, if I recall correctly, that they were all signed in his own presence. 775

Mr. Mann: May I ask him questions now?

Trial Examiner Korey: No, you will have an opportunity for cross examination later.

Mr. Mann: I object to it now on the ground that up to the present time the signatures have not been identified by the witness.

Mr. Graham: The witness has said that all of the applications were signed in his presence.

Q. (By Mr. Graham) Were all of these applications signed in your presence? A. Yes. 776

Mr. Mann: I object to that because he, himself, claims he doesn't know the people by their names; he knows them by their faces.

[318] Trial Examiner Korey: I will allow it and let you have your exception.

Mr. Mann: I except.

Mr. Graham: That is all.

Mr. Mann: Are you through, Mr. Graham?

Mr. Graham: I would like to ask him one or two more questions.

777

Q. (By Mr. Graham) In further reference to this date of the last conversation, I would like to have that cleared up, if possible.

When did a large number, or the large number of employees—when did the body of employees start returning to work? A. When they opened the plant.

Q. When they opened the plant? A. Four weeks after.

Q. Four weeks after that strike was called? A. Yes.

778 Q. On the 30th? A. Yes, on the 30th.

Q. Were there any employees still out on strike, with the exception of the two who have been mentioned, Nick Andretti and Blasi, after the end of September, a month after the plant was opened? Had they all gone back except for these two, insofar as you know at that time? A. There was a few more girls out.

[319] Q. At the end of September? A. Not at the end of September; in September.

Q. There were a few out in September? A. Yes.

Q. Are you sure that you didn't make a mistake in your

779 answer relating to the conversation which you heard between Healey and several of the girls? You testified that that conversation occurred two or three or three or four weeks after the first of September. Are you sure that that statement was not incorrect? A. No, it was in between, two weeks, he had one conversation with the girls in which Mr. Healey stated to them that he would never take them girls back.

Q. And that conversation occurred when? A. I can't remember exactly the date.

Q. You are sure of the date of that last conversation? A. No, I am not sure.

780 Mr. Graham: That is all.

Cross Examination:

Q. (By Mr. Mann) How old are you, Mr. Landriscina? A. Thirty-seven.

Q. Are you a citizen? A. Yes.

Q. Where do you live, you say, in Hoboken? A. Yes.

[320] Q. In Bloomfield Street? A. Right.

Q. And you say that you are employed by the National 781
Biscuit Company? A. Yes.

Q. Do you mean that you are employed there now? A. Not now; I used to be.

Q. And you aren't employed by the National Biscuit Company now? A. No.

Trial Examiner Korey: I think he explained that.

Mr. Mann: He testified on direct that he is employed by the National Biscuit Company.

Trial Examiner Korey: I think he was asked by counsel for the Board— 782

Mr. Mann: I don't know whether he is employed.

Q. (By Mr. Mann) Now, you aren't employed now?

Mr. Graham: His testimony was that he had part time employment.

Q. (By Mr. Mann) When did you stop working in the National Biscuit? A. I believe it was six months.

Q. Six months ago? A. Yes, sir.

Q. Do you mean about right after the beginning of this [321] year? A. Yes. 783

Q. You are sure? A. In this year?

Q. In this year; in January? A. No, it was, I think, about May.

Q. About May of this year. Did you work there January, February, March, April, and May? A. Yes.

Q. Over in Long Island? A. New York.

Q. New York plant; what street? A. 15th Street and 10th Avenue.

Q. What did you do for the National Biscuit Company?
784 A. I worked over there.

Q. What kind of work? A. Just a floor man, all around.

Q. And did you leave of your own accord, or were you discharged? A. No; I left there because we were told from the union—I was an officer of the union.

Trial Examiner Korey: Did you resign or did you quit, yourself?

The Witness: No.

Trial Examiner Korey: What did you do?

[322] The Witness: I just asked for a leave of
785 absence.

Q. (By Mr. Mann) You asked for a leave of absence? A. Yes.

Q. Did you tell them why you wanted a leave of absence? A. Yes.

Q. What did you say? A. I told them because I wanted to go out and organize for the union and do some work for the union.

Q. That was some time in May? A. Yes.

Q. And when you left there in May, how long had you been working there previously? A. Fifteen years.

786 Q. And when you left their employment in May, did you immediately go to this union here—the Bakery & Confectionery Workers Union? A. The union?

Q. Yes. A. I went down to the union; I am an officer of the union.

Q. You were an officer ever since the time you were working there? A. From the first of the year, yes.

Q. And now your job is to do organizing; is that right? A. Right.

[323] Q. And you started to organize the plant of the National Licorice Company about the beginning of July, you say? A. Right.

Q. Who were the first employees of the National Licorice Company that you first organized? Can you give us their names? A. Well, they came down to headquarters, a few people, and they wanted to be organized.

Q. What was the first day that any workers came down to headquarters to be organized? Do you know that? A. Well, they came down to see me, I believe it was July 8th; something like that.

Q. That was the first time, July 8th, that any workers of the National Licorice Company came down to your headquarters to be organized; is that right? A. Yes.

Q. Can you tell us how many workers came down on that day? A. Quite a few came down to ask me questions.

Q. How many? A. There was about twelve.

Q. About twelve came down on July 8th Did they sign any of these application cards on July 8th? A. No. First, they asked me for questions and information, and I gave it to them.

Q. You never had seen these people before July 8th; is [324] that right, Mr. Landriscina? A. Right.

Mr. Graham: May I ask where that little slip has gone to?

Trial Examiner Korey: Here it is (indicating).

Q. (By Mr. Mann) What is this headquarters; is that the headquarters of this local? A. Our general office is in New York, and probably we opened a branch.

Q. Is that what you said? A. Yes.

Q. In Park Avenue, in Brooklyn? A. Yes.

790 Q. Who has charge there; you? A. Yes, at that time it was Brother Picariello.

Q. And when these workers, about eight or ten, came down for the first time on July 8th, they wanted some information about the union? A. Yes.

Q. And you gave it to them, didn't you? A. Yes.

Q. Now, what did you tell them; to come back? A. Yes, I told them that; they told me to go down to the plant and meet them on the 10th, I think it was; I know it was on Saturday, July 10th.

[325] Q. You told them to come over on the 10th or they—

791 A. They asked me to go down to the plant and meet them down there.

Q. Did you do that? A. Yes.

Q. On the 10th of July? A. Yes.

Q Did you go into the plant or did you wait for them outside on the street? A. Yes, outside.

Q. At the end of the day's work? A. Yes.

Q. What did you do there that day? A. I signed up a few people.

Q. Right in front of the plant? A. No, it was about two blocks away from the plant.

Q. Where did you take them? A. I had my own car down

792 there.

Q. In your car? A. Yes.

Q. Did you take them back to the office? A. Yes.

Q. Is that where they signed? A. No, they signed in my car.

Q. In the car, the ten of them? [326] A. Fourteen.

Q. The fourteen, in your car, on the 10th? A. Yes.

Q. And the fourteen that signed are included in this Board's Exhibit 8, is that right? A. What do you mean, 8? 793.

Mr. Graham: That simply refers to these applications.

The Witness: Yes. On July 10th, that is when I signed the fourteen.

Q. (By Mr. Mann) Were there any women's names among the fourteen that signed on July 10th? A. No.

Q. All men? A. Yes.

Q. And all these fourteen signed in your car; is that right? A. Right. 794

Q. What day of the week was July 10th? A. It was on a Saturday.

Q. Are you sure they signed on July 10th? A. Yes.

Q. On a Saturday? A. Yes.

Q. Mr. Healey just told me that the factory wasn't opened on July 10th. [327] A. That happened to be the only Saturday; they happened to work that Saturday.

Q. You think that was the Saturday that it was open? A. That is right.

Q. Whose handwriting is this, the body of this application, all these things here; in whose handwriting is it, yours? (Indicating.) A. Mine. 795

Q. All in your handwriting? A. No.

Q. What is in your handwriting? A. If you don't show me—

Q. I will show you (showing to witness). A. It is all in mine.

Q. All in your handwriting? A. Yes.

Q. All except what; not everything on there is in your handwriting, is it? A. Except where they signed it.

Q. Except the signatures? A. Yes.

Q. Will you get a piece of paper and let me see you write the words "National Licorice Company" on a piece of paper: "National Licorice Company"—will you please write those words? [328] A. (The witness writes on a piece of paper.)

Q. Write it three times more on this paper. A. (The witness writes on a piece of paper.)

Mr. Graham: I would like to ask the Examiner whether this is necessary.

Mr. Mann: Very necessary.

Trial Examiner Korey: The Examiner would like to see the original and compare it, himself.

Q. (By Mr. Mann). Will you write it three more times?

Trial Examiner Korey: Write it twice more and let me compare it, too.

Mr. Mann: I offer this in evidence.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 7, in evidence.)

Q. (By Mr. Mann) Now, you say that these were signed on the 10th, these fourteen; is that right? A. Right.

Q. Do you read English? A. Yes.

Q. Do you know that in answer to question No. 29 on this application blank there are two words in small letters, reading, "Date signed" and I call your attention to the fact that on not one of these fourteen applications is there a date filled in there.

Trial Examiner Korey: Let's see so that the witness [329] will know what you are asking him.

Q. (By Mr. Mann) The words "Date signed" which are directly under the place marked "Signature." These words, "Date signed."

Now, you see on not one of them is there any date. How do you know now that those were signed on July 10th if the date is not there? A. Because when we filled in applications there were so many people down there; in order to do quick work, we just write on the back; we don't bother with the bottom.

Q. You happened to be in somewhat of a hurry? You say these people went in the car with you? A. That is right. I had a lot of business to do.

Q. Well, the fact is that there is no date on the application card? A. No, we write on top; we never put it over there.

Q. Well, on top is the date of the filing of the application? A. Yes.

Q. Did you file it the same day? A. That is the only time I wrote the application.

Q. You wrote it there? A. Yes.

Q. Didn't you ask any of these fourteen men to put in the date on which they signed it? [330] A. No.

Q. You never did that, did you? A. We did, at times, when we had time, but when we haven't time, we don't do it.

Q. This was on Saturday. Do you want to tell us that you didn't have any time that Saturday? A. I know my business.

Trial Examiner Korey: Don't argue.

Q. (By Mr. Mann) You didn't have time that Saturday;
802 is that right? A. Yes.

Trial Examiner Korey: The date that you have on the right hand corner of this application; is that the date that these people signed?

A. Yes, sir.

Q. (By Mr. Mann) Is everything on here true? A. Whatever is on there is what I asked the people.

Q. I call your attention to the figure "30" on here, which says, "Date applicant was initiated," and I show you these
803 fourteen applications again and ask you whether those figures, "7-10-37" are in your handwriting on all of them. Just look at them.

Mr. Graham: What number is that, counsel?

Mr. Mann: At the bottom (indicating).

The Witness: Yes.

[331] Q. (By Mr. Mann) When did you write "7-10-37" alongside Question No. 30? A. You see, first—

Q. When did you first write this "7-10-37" there? A. I fixed that when I went home.

804 Q. That night? A. Yes.

Q. So, on the night of July 10th when you went home, you wrote down that these applicants were initiated? A. I did that so I could get everything out on this Monday.

Q. You wrote that these applicants were initiated on July 10, 1937? A. Right.

Q. In the union. Now, I call your attention to the words above that, "The following to be filled out by the local

union's secretary after applicant has been initiated and examined by the doctor before forwarding to headquarters." 80

Was any applicant, any of these fourteen men, ever examined by a doctor? A. The only time—

Trial Examiner Korey: Just a moment. We are concerned in this issue here with the application, the upper part of this.

Mr. Mann: Oh, no.

[332] Trial Txaminer Korey: Oh, yes, we are. I am going to entertain a motion that anything pertaining to confidential information required by the union is without the issue here, and we are not going to consider it. 80

Mr. Graham: I so move.

Trial Examiner Korey: I will sustain the objection.

Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record. Proceed.

Q. (By Mr. Mann) What day of the week was July 12th, do you know? Look at your calendar. A. On Monday. 80

Q. And, now, I show you 27 applications which you have submitted here and which you say were signed on July 12th; is that true? Were they signed on July 12th? A. Yes.

Mr. Graham: I suggest that counsel show him the applications before asking him the dates thereon.

Q. (By Mr. Mann) Do you want to look through all of the
808 27 applications? A. Yes.

Q. Where were these 27 signed? A. At headquarters.

Q. Your headquarters? A. Yes.

[333] Q. 194 Park? That is at 194 Park Avenue? A. Right.

Q. What time of the day on July 12th? A. I don't remember the time.

Q. Were they signed in your presence? A. Yes.

Q. Every one of them? A. Yes.

Q. And you don't remember the time of the day? A. I believe it was about 5:00 o'clock.

809 Q. Did they all come over together, all the 27? A. Yes.

Q. And they all signed at one time; is that right? A. Yes.

Q. In front of you? A. Yes, sir.

Q. And you now swear that every signature on the 27th was signed in front of you? A. Right.

Q. And you didn't have any date put in on the left of the signature, just the same as the others? A. That is right.

Q. Were you very busy on July 12th, too? A. Yes.

Q. Now, I show you fifteen applications which you say were [334] signed on July 13th, and I call your attention to the fact that out of those fifteen, twelve have got the date
810 alongside of the word "date signed" and three haven't. Is there any reason why those twelve should have the date along the left and three should not? A. Well, sometimes we do that and sometimes we don't. We don't worry about that because, so long as we have the date on the back, that is the main thing we worry about. We don't worry about any other date.

Q. Did those fifteen people come down at the same time to your union headquarters? A. Yes.

Trial Examiner Korey: Did they sign at union headquarters?

A. Yes.

Q. (By Mr. Mann) Signed at union headquarters on the 13th of July? A. Right.

Q. And on twelve of them you put the date, although they came down at the same time and all signed simultaneously, and on three of them you didn't put the date; is that true? A. Sometimes; I told you before.

Q. Is that right?

Trial Examiner Korey: Yes or no?

A. Yes.

[335] Q. (By Mr. Mann) Were you very busy that night when you signed these? A. Busy all the time.

Q. But you had plenty of time to sign the date "July 13th" on the twelve of them? A. Yes; sometimes we do.

Q. Let me ask you this: Are the words "July 13, 1937" on the twelve out of the fifteen applications in your handwriting? A. No, sometimes they signed them themselves. When they sign the applications, they signed themselves, too.

Q. Did you ask them to do that? A. Some of them do; they know how to read.

Q. Look at this one, signed by Katherine Zomallo: The words "July 13th" on the left. Is that your handwriting? A. No.

Q. Is any one in July in your handwriting there? Look
814 at it. A. That is mine (indicating).

Trial Examiner Korey: Are you referring to this date in the left—on the left side of the page alongside of the signature?

The Witness: That is right.

Trial Examiner Korey: He is asking you whether these dates are in your handwriting (indicating)?

[336] The Witness: No.

Trial Examiner Korey: We will take a five minute recess.

815

(Whereupon a recess was taken for five minutes, after which the following proceedings were had:)

Trial Examiner Korey: All right, gentlemen, you may proceed.

Q. (By Mr. Mann) Now, I hand you 43 applications which you say were signed on July 14th and I call your attention to the fact that under the place where it says "Date signed," 17 of those 43 have no date—look at them—and the other 26 have.

Can you explain that? A. Well, that date is there on the
816 bottom.

Trial Examiner Korey: He said some of them have and some of them haven't.

Assuming that the count is correct, can you tell us why 17 of these are not dated and the balance are dated?

The Witness: Why, I got to do practically everything, and people were coming in who were on strike —Rockwood—so we had confusion, ourselves,—to sign up, and we wanted to get them quick to sign it.

Q. (By Mr. Mann) Were these 43 signed at the same time like the others? A. Yes.

[337] Q. Where? A. At 194 Park Avenue.

Trial Examiner Korey: Headquarters?

The Witness: Yes.

Q. (By Mr. Mann) What time of day were these signed, do you know? A. I think when they came out of the shop.

Q. You mean, after four o'clock? A. I mean, after four o'clock.

Q. The 43 of them came over to your place of business after four o'clock? Is that right? Or after four-thirty on the afternoon of July 14th? A. Well, that is when they were through work.

Q. After they got through work? A. Yes, that is, after four o'clock, or I think they work until four-thirty.

Q. Were all of these forty-three applications signed in your presence on July 14th? A. Mine and Mr. Picariello.

Q. You were there all the time while they were doing the signing—you and Picariello, both? A. Yes.

Q. You were together? A. Yes.

Q. What time does your headquarters open? [338] A. Eight o'clock in the morning until nine o'clock or ten o'clock at night.

Q. Open at eight o'clock in the morning? A. Yes.

Q. You are sure that these 43 people came after work, that day? A. Yes.

Q. You are positive about that? A. Well, maybe they came
820 down some time that day. I don't know if they came afterwards or not.

Q. It was in the afternoon, was it? A. I think it was in the afternoon, yes.

Q. There can't be any mistake about that? A. I presume it was after four.

Q. What is that? A. I think it was in the afternoon, after they worked.

Q. Are you sure about that? A. I think so.

Q. So that means that on the morning of July 14th you had signed up 56 workers, namely, 14 on July 10th, 27 on
821 July 12th, and 13 on July 15th—no, 15 on July 13th, excuse me. Let me repeat that question: When your headquarters opened on the morning of July 14th, you had signed up, up to ten o'clock at night of July 13th, the following number of workers, for which you say you had cards or applications: [339] Fourteen on July 10th; 27 on July 12th; and 15 on July 13th; is that correct? A. Right.

Q. Right? A. Yes, sir.

Q. That makes a total of 56 workers that you had signed up when your office opened on the morning of July 14th? A. Right.

Q. Is that true? A. Yes.

822 Q. Now, I call your attention to that telegram, respondent's exhibit 1, which was signed by Mr. Galvin, in which he says that we represent the employees of the company—we meaning the union—for the purposes of collective bargaining.

That telegram was sent on the morning of July 14th at 9:13 a. m., is that true? A. Well I don't know anything about the telegram.

Q. You don't know anything about the telegram. Is that telegram true? A. I don't know anything about the telegram. 823

Q. Did you ever see the telegram? A. No.

Q. Did you tell Mr. Galvin when he sent the telegram that you represented more than 51 per cent of the employees of National Licorice Company on the morning of July 14th at [340] 9:13 a. m.? A. I did.

Q. You told him you represented them? A. Yes.

Q. That wasn't true, was it? A. It was true, because I had already some people told me that they would come over at night and sign up.

Q. Didn't you just tell me that these people had signed in your headquarters at 4:00 that night—these 43? A. I said 824 I think they did sign that day; I wasn't sure if it was in the morning.

Q. You didn't say anything about the morning a few minutes ago.

Mr. Graham: May I ask that the witness be allowed to complete his answer before counsel interposes the next question?

The Witness: So I called up Mr. Galvin and I told him it would be 51 per cent, because these people were coming over and sign up.

825

Q. (By Mr. Mann) You told him that in the morning? A. Yes.

Q. At what time in the morning did you tell him that? A. I called him up, I think it was, about eight o'clock.

Q. Eight o'clock in the morning? A. Yes.

[341] Q. Where did you call him? Where did you make the telephone call from? A. At his house.

Q. From your headquarters? A. Yes, sir.

Q. At eight o'clock in the morning on July 15th, you made a telephone call to Mr. Galvin's house? A. Yes.

Q. Where did he live at that time? A. Well, I had his telephone number.

Q. What is the telephone number? A. I don't think I ought to give that.

Q. Have you got it in your pocket? A. No.

Q. Do you know the number that you called up at eight o'clock in the morning that day, July 14th?

Mr. Graham: Mr. Examiner, I object to counsel requesting his telephone number. It is sufficient for this proceeding that he did call up.

Q. (By Mr. Mann) You did call Mr. Galvin on the telephone? A. Yes.

Q. And you told him that you had more than 51 per cent of the employees? A. Yes.

[342] Q. But when you did call him that morning, all you had was 56 employees who had signed these application blanks, is that right, namely, 14 on July 10th; 27 on July 12th; and 15 on July 13th; is that true? A. Yes.

Q. No further questions about the rest of the applications.

Now, let's proceed with something else. Now, Mr. Landriscina, you said that you heard of trouble on August 2nd and you went to the plant about one o'clock; is that right? A. Yes.

Q. And you saw the people standing in the shipping room, you said? A. Yes.

Q. And you spoke to several workers there—Nick—what is his last name? A. Nick Andretti.

Q. And also to Carmelo Tesora and to another girl; is that what you said? A. Yes. 829

Q. And you say those three people told you that they were locked in? A. Yes.

Q. Did they ask you to call the police? [343] A. No.

Q. Did you offer to call the police to help them out from their imprisonment? A. No.

Q. You knew they weren't locked in, didn't you, Mr. Landriscina? A. They told me they was locked in.

Q. When you found that out, you called Picariello, is that right? A. Right.

Q. And he said that Mr. Anderson was coming over? A. Yes. 830

Q. And then Anderson did come over? A. Yes.

Q. And he went into the plant with Mr. Picariello; isn't that true? A. Yes.

Q. They were trying to find out from Mr. Sanford what had happened? A. Yes.

Q. You knew what had happened, didn't you? The workers had staged a sit-down strike? A. A sit-down strike, or whatever it was; I know they stopped working.

Q. They stopped working but they didn't go out of the [344] plant; they remained in the plant; isn't that what they did? A. I said, why didn't they come out, and they said, "We was locked in." 831

Q. You were—you asked them why they didn't come out and they said they were locked in? A. Yes.

Q. That isn't true; they didn't want to go out and they were sitting down or standing up and taking possession of the National Licorice Company property? A. No.

Q. But the National Licorice Company had to call the police; isn't that true?

Mr. Graham: I object to the form of the ques-
832 tion.

Trial Examiner Korey: If you know.

The Witness: They were down there.

Q. (By Mr. Mann) Don't you know that it was the National Licorice Company people who called Captain Richter to get the workers out of the plant? A. I don't know.

Q. It wasn't the workers who called Captain Richter, was it? A. I don't know.

Q. You didn't call Captain Richter? A. No.

Q. Anderson didn't call Captain Richter? [345] A. No.

833 Q. And Picariello didn't call Captain Richter, did he? A. I don't know what Picariello did.

Q. As far as you know. A. As far as I know, no.

Q. Were the workers doing any damage to the property while you were there, that you saw? A. I didn't see no one; I was outside.

Q. Well, at one o'clock when you came there, you say you found the workers in the plant? A. Right.

Q. And you asked them what is the matter and they said they are locked in? A. Yes.

Q. After you had asked them why they hadn't gone out? A. Yes.

834 Q. And it wasn't until four o'clock, according to your testimony, that they went out of the plant? A. That is when they came out.

Q. That is when they came out.

Trial Examiner Korey: That same day?

The Witness: The same day, yes, sir.

Q. (By Mr. Mann) Now, when they came out, you said you formed a picket line? A. Yes, sir. 835

[346] Q. And did you do that pursuant to instructions that was given to you by Mr. Galvin? A. No.

Q. Did you have authority in the union to form a picket line? A. Yes.

Q. The union had called a strike, had they not? A. No.

Q. The union had not called a strike? A. No.

Q. Who called the strike? A. I don't know.

Q. There was a strike? A. Not that I know of.

Q. There was no strike? A. No.

Q. Didn't you order picket signs? A. I ordered them after Mr. Anderson came out and he said that Mr. Sanford didn't 836 want to talk to them, so the people walked out and they were on strike.

Q. When I asked you whether there was a strike, you said no. Do you want to change that answer? A. After four o'clock there was a strike, yes.

Q. After four o'clock there was a strike? A. Yes.

[347] Q. What called that strike—who called that strike, the union? A. The only thing we can do in a condition like that. We put a picket line on that and formed a strike. We have poor people.

Q. When you put a picket line on, that is the time that you are declaring a strike; isn't that right? A. Well— 837

Q. You are a union man; I know something about this, too. A. According to me, Mr. Sanford called a strike, themselves.

Q. Sanford called a strike? A. It must be the way they got treated inside.

Q. Do you want me to take that answer seriously? A. Anyway you want.

Q. Don't you know that you ordered the picket signs? A. After four o'clock.

Q. After four o'clock on August 2nd; is that right? A. Yes.

Q. Don't you know that the union paid for these picket signs? A. Sure.

Q. Do you know how much the union paid for the picket signs?

Trial Examiner Korey: We will not take that up.

[348] Mr. Mann: All right.

Q. (By Mr. Mann) What else did the union pay for? A. Whatever is necessary.

Q. Paid for everything that is necessary? A. Yes.

Q. Have you any record as to how much you paid for this strike? A. How much it cost the union? A. No.

Q. And you say that picket line lasted for two weeks; do you mean that? A. Lasted until today.

Q. Do you mean that? A. It is still a strike.

Q. I asked you about a picket line.

Trial Examiner Korey: When were the pickets discontinued?

The Witness: Two weeks ago.

Q. (By Mr. Mann) Two weeks ago the picket line was called off? A. I believe it was September 20th.

Q. September 20th? A. Yes.

Q. Who called off the picket line? A. I didn't call them off.

Q. You didn't call them off? They stopped picketing, them-

[349] selves? A. They were off, because Mr. Healey came out.

Q. Now, did they stop picketing, themselves, or did you give them the order to stop picketing on September 20th? A. I didn't tell them to stop. 841

Q. You didn't? A. No.

Q. And you still think the strike is on? A. Yes.

Q. Don't you know that everybody but two people went back to work since September 20th? A. That is why I call it a strike.

Q. Because two are not working; that is why you say there is a strike? A. Yes.

Q. Two out of about 135? A. Yes.

Q. And if those two don't want to come back, or if they never go back, you will say that there is a strike up there in 1947, won't you? A. Yes, I guess so. 842

Q. So, according to the way you are answering me now, if these two men—by the way, what are their names, that are not working there? A. Nick Andretti and Jim Blasi.

[350] Q. Nick Andretti and Jim— A. Blasi.

Q. If these two men are not working in the plant of National Licorice Company ten years from now, you will say that there is a strike in the plant of the National Licorice Company; is that right? A. Yes.

Mr. Graham: I object to this line of questioning; too many things can happen in a ten year period, which the witness cannot prophesy. 843

Trial Examiner Korey: Objection sustained.

Q. (By Mr. Mann) Nick Andretti and Blasi are now working for the union? A. No.

Q. Aren't they working for the union now, and haven't they been for the last couple of weeks, organizing? A. No.

Mr. Graham: I object to the question unless the
844 word "work" is properly defined.

Q. (By Mr. Mann) Have they been receiving any money from the union? A. No.

Q. How do you know that? A. I am the one who has the headquarters down there.

Q. There are other places where the union could have head-
[351] quarters besides your Park Avenue headquarters?

Trial Examiner Korey: Of your own knowledge, do you know they are receiving any money from anybody
845 in the union?

The Witness: No, sir, nobody.

Q. (By Mr. Mann) What are they doing, do you know? A. Just waiting down there for a job.

Q. What? A. Waiting for a job.

Q. Did they ever come back to the plant of the National Licorice Company to ask for a job? A. Well—

Q. Did they ever come back to the plant of the National Licorice Company to ask for a job; yes or no, if you know, please? A. I can't say anything.

Q. You don't know; is that the answer? A. I can't say it.

846 Trial Examiner Korey: Do you want to make an explanation?

The Witness: Yes.

Mr. Mann: I object to an explanation.

Trial Examiner Korey: We would like to have it, ourselves, for our own information.

The Witness: The answer is this, because Mr. Healey

told me, himself, that he will never get these two men back [352] because they were gorillas. 847

Q. (By Mr. Mann) They were arrested, weren't they? A. Sure, they were arrested.

Q. There is a warrant out for one of them, isn't there? A. Yes.

Q. Which one is the warrant out for? A. Well—

Q. Which one is the warrant out for? A. Not that I could say.

Trial Examiner Korey: Do you know what he means by a warrant? 848

The Witness: No, I don't know anything about that.

Q. (By Mr. Mann) Which one was held for Special Sessions? A. Nick Andretti.

Q. And is there a warrant out for Blasi? A. None that I know of.

Q. Don't you know that Blasi didn't sleep home for weeks because there was a warrant out against him? A. No, not that I know of.

Q. Don't you know that he slept at union headquarters?

Mr. Graham: I object to this line of examination unless the relevancy is shown. 849

Trial Examiner Korey: Objection sustained.

Mr. Mann: Exception. It has got a lot to do with it.

Trial Examiner Korey: The fact that he slept in the [353] union headquarters?

Mr. Mann: Because he says they never came back to work, to ask for their job back.

Trial Examiner Korey: I will sustain the objection
850 as to the last question.

Mr. Mann: Exception.

Q. (By Mr. Mann) Do you know that the police authorities are after him? A. No.

Q. Did he ever tell you that? A. No.

Q. Did anybody ever tell you that? A. No.

Q. Now, let me ask you something: In answer to Mr. Graham, you mentioned a number of dates when you were around the plant and you say you heard things and you talked to Mr. Healey and you talked to Anna Dunn and a girl named
851 Helen, and another girl named Carmela.

Did you ever make any notes of those things? A. No.

Q. So what you say now is your recollection of what happened at those times? A. Yes.

Q. Now, you said that on one occasion in a saloon, the date of which you fix as August 21st, you saw Mr. Healey and [354] a guard buy beer; do you remember that? A. Yes, sir.

Mr. Graham: I believe the testimony was stated as to Healey and the guard on different dates.

Mr. Mann: I thought he said the same.

The Witness: No.

852

Q. (By Mr. Mann) Different dates? A. Yes.

Q. What is the date you saw Mr. Healey in the saloon? A. It was on Wednesday of the following week.

Q. Look at the calendar and tell me the date. A. I think it was the 23rd or the 24th, something like that.

Q. Did he buy you a beer that day? A. No.

Q. Did you talk to him? A. No.

Q. You didn't even talk to him? A. No.

Q. What did you do? A. I was just standing over there 85
in the saloon.

Q. You were in the saloon while he was there? A. I went over to call up the headquarters and I found Mr. Healey there and that he was buying the beer for these strikers.

[355] Q. Do you think that is a violation of law? A. No.

Q. There is nothing wrong in that, is there? There is nothing more wrong in that than if he bought you a beer, is there? A. No.

Q. Do you think it is a violation of law if Mr. Healey were to ask the strikers if they wanted to come back to work; do you think that is a violation? 85

Mr. Graham: I object to the question, because the witness is not competent to testify as to violations of law.

Mr. Mann: Let's see what he knows.

Trial Examiner Korey: If you ask him that question, together with the rest of his answer that he gave on direct examination, I would allow it. Just take one part of that question.

Q. (By Mr. Mann) Tell us what Mr. Healey said; let us get it that way; what did he say? A. Mr. Healey said— 85

Q. To whom did he say it? A. To this Carmela and a couple of more girls; he said that they ought to go back to work.

Q. They ought to go back to work? A. Yes.

Q. You are giving me the exact words that he used? [356] A. Yes, that they ought to go back to work because there will never be any union shop in there, and if they don't that they was going to ship the plant to Philadelphia and

the people will be out of work. So I told the girls that they
856 should not worry about it; that they will never move the plant out there.

Q. You guaranteed that, did you not? A. That is what I said; that is my job, to say that.

Q. You did not know what they were going to do? A. No, I did not know what they were going to do.

Q. Did you know that they had a plant in Philadelphia? A. Yes.

Q. And if they wanted to, they could operate that plant from Philadelphia, too? A. Yes.

Q. Do you know they have a plant in Moline, Illinois?
857 A. Yes.

Q. Do you know they have got a plant in Montreal, Canada? A. Yes, and so the girl—I said to the girls that they should not bother with what Mr. Healey said, and Mr. Healey spoke more to this girl, that they would take everybody back except Jimmy and Nick and Carmela and Helen.

Q. They took back Carmela and Helen, did not they? A. I don't know.

Q. Do you not know that Carmela is working there? [357] A. So Mr. Healey came out—

Q. Do you not know that Carmela is working there; do you not know that Helen is working there now? Those two
858 girls are working there? A. Yes.

Q. But they did not take back Andretti—at least, Andretti is not taken back, is not working there now. I withdraw that. Andretti is not working there now and Jimmy Blasi is not working there—those are the only two that are not working? A. Yes.

Q. Do you think that the union lost this strike? A. I do not know.

Q. You know that when the workers stood in that plant or sat in that plant on August 2nd from 2:00 p. m. to 4:00 p. m., necessitating the calling of the police, and then you put the picket line on August 2nd at 4:00 p. m., as you testified, do you know that the plant remained closed from August 2nd to August 25th? A. Right. 859

Q. And the plant opened on August 25th and not on August 30th, as you have testified? A. Opened up after four weeks. I told you I don't remember that, but they opened up after four weeks.

Q. And these workers lost four weeks to five weeks pay for [358] this thing; isn't that right? A. Right. 860

Mr. Mann: That is all.

Trial Examiner Korey: All right.

Mr. Mann: May I ask one or two questions before—

Trial Examiner Korey: Yes.

Q. (By Mr. Mann) Mr. Landriscina, you said in your answer in your direct examination, you said there was a time, the latter of August, I think, when some people were arrested,—A. Yes.

Q. And then you said you heard Healey say that he would never take back Nick Andretti or Jimmy Blasi or Tesora; is that what you testified to? A. Yes. 861

Q. Did not Mr. Healey say that he would not take back anybody who was convicted of violence; is not that what he said? A. No.

Q. Did not he use those words? A. No.

Q. Now, you said that you heard Healey say that he would take somebody back—I do not remember who you mentioned—I withdraw that. You said that Mr. Healey said he

would drop the charge if some girls—one or two of the girls—
862 would go back to work. Do you remember saying that?

[359] Mr. Graham: I object to that because that was not the testimony.

Trial Examiner Korey: This is cross examination.

Mr. Mann: What did he say about dropping the charges?

The Witness: He said that he would drop the charge if they would go back to work.

Q. (By Mr. Mann) To whom did he say that? A. To
863 Carmela, Helen, and a girl named Anna.

Trial Examiner Korey: When he says "Ellen," he means "Helen."

Q. (By Mr. Mann) He said that to Carmela, Helen and who? A. Anna Dunn, another girl.

Q. He said he would drop what charge? A. The strike against the girls.

Q. Against those three girls? A. No, there was about six girls.

Q. Six girls had been arrested? A. Yes.

Q. Do you know the names of those six girls? A. No.

864 Q. And you say that Mr. Healey said to three girls, namely, Carmela, Helen and Anna Dunn, that he would drop the charge against those six girls if Carmela, Helen and Anna would go back to work; is that what you testified? A. He said he would drop the charges, all the charges, if [360] they would go back to work.

Q. If those three girls— A. If they all go back to work.

Q. If they all go back to work, he would drop the charges against everybody? A. Yes. 865

Q. Do you know what the charges were? Who had made those charges against these girls? That is, which—or, within the knowledge of the witness. A. I do not know.

Q. Do not you know that these girls had been arrested by police officers? A. Yes.

Q. Mr. Healey could not drop a charge which had been made by a police officer, could he?

Mr. Graham: Not within his knowledge.

Trial Examiner Korey: We will sustain the objection to that. 866

Mr. Mann: You sustain that, Mr. Examiner?

Mr. Graham: I object simply on the ground that it has not been shown that the witness has first knowledge of that fact, first-hand knowledge of that fact.

Trial Examiner Korey: Yes.

Mr. Mann: Let us see whether he has or not.

Q. (By Mr. Mann) Do you know who had made the charges [361] against these girls? A. I do not know.

Q. Do you know what they were arrested for? A. No.

Q. You do not know anything about it? A. No.

Q. Notwithstanding that you heard Healey say he would drop the charges if the girls would go back to work? A. If they all would go back to work. 867

Mr. Mann: That is all.

Redirect Examination:

Q. (By Mr. Graham) You have been asked, Mr. Land-

rescina, to sign your name on a piece of paper, three times—
A. Yes.

868 Q. (Continuing)—during this hearing, or, rather, the name of National Licorice Company. A. Right.

Q. There has been testimony that you wrote the name of National Licorice Company on various of the applications, has there not? A. Right.

Q. I would like to ask you under what conditions those applications were filled in? Were they filled in under conditions in which you had to write in a hurried way, in which you might have had inadequate space and desks on which to [362] write, and under conditions under which your attention may have been diverted from time to time? A. I told
869 you we had three companies; we had Williamson Candy. We had a couple more, and we had to make these applications quick, because it was a small place—it was a small place there and people all came in, so we had to do as quickly as possible.

Q. Your office is small? A. Yes.

Q. And there would be a large number of people coming in to fill out such applications? A. Yes.

Q. And you were there under extreme haste and urgency, is that right? A. Right.

Q. You have been questioned as to dates which appear
870 upon the applications. A. Yes.

Q. All of the applications are dated on the top, are they not? A. Some on the top and some on the bottom.

Q. Some of them are dated on the bottom? A. Yes.

Q. But they are all dated? A. Yes.

[363] Q. I asked you a question about the circumstances under which these applications were filled out. Didn't necessity hurry your work, which would result in putting in one or

more of the two dates? A. It would not make any difference, as long as we put on one date; it is all right. 871

Mr. Mann: Where?

A. Just put the date on one line; that is all it is.

Q. Now, as to the filling in of that date—the date which appears upon the application—before that space was filled in and before the applicant was initiated, I would like to ask you whether it was the custom of the union to occasionally fill in that date and then change it to the date of actual initiation, when he received his card—perhaps that is not clear. 872

Here on the application there is a place for the date. A. Yes.

Q. For when the applicant was initiated. A. Yes.

Q. Do you occasionally fill in the dates here, which should have appeared up here, and then later correct the dates to conform with the time when they were actually initiated; later on did you change those dates so that they bore the actual date of initiation? A. No; first I put the dates on top.

[364] Q. That is what you did first? A. Yes.

Q. There has been testimony as to the time at which these applications were filled out. I would like to ask you whether or not if it is true that the applications were filled out by the applicants when they left work and came to the office. 873

So that the time will be after working hours that they were there? A. After working hours, yes.

Q. And other than that you have no recollection whether or not it was 5:14 or a quarter of six or any specific time? A. No.

Mr. Graham: I would like to request of Counsel for the Company that the envelope of this telegram at issue and so received be also admitted in evidence.

Mr. Mann: We have not got that; never saw that.

Mr. Healy: I threw that away the first time I got it.

Mr. Graham: I would like to read for the record the first line of this telegram and then the concluding line of the telegram to show that there must have been some error actually committed—

Mr. Mann: Wait a minute; that I object to.

Trial Examiner Korey: Let it speak for itself. Call [365] attention to the first line and the last line.

Mr. Graham: I call attention to the fact that the telegram which has been put in evidence as Respondent's Exhibit No. 1 has as the first line thereof, among other statements, "9-33-A"—apparently a reference to 9:33 A. M.— and that at the conclusion of this telegram the indication of the time at which the telegram was delivered—

Mr. Mann: Now wait a minute—

Trial Examiner Korey: He can read that in there; it is part of the record now.

Mr. Mann: That man's conclusions should not go in.

Trial Examiner Korey: No, that man's conclusions should not go in; he says, "at the conclusion of the telegram."

Mr. Mann: There is "7-33-A."

Mr. Graham: There appears the time "7-33-A."

Mr. Mann: I don't know whether that is the time or not; it may be something altogether different.

Trial Examiner Korey: The numbers there—"7-33-A"? 877

Mr. Mann: I don't concede that that means time or anything like that; I don't know what it means.

Mr. Graham: The telegram is now in evidence and I would like to have attention called to those two series of numbers, followed by "A."

Q. (By Mr. Graham) Mr. Landriscina, there has been a [366] discussion of the picketing and of the return to work of employes. I would like to ask you whether the picketers left the picket line and returned to work immediately? 878

Mr. Mann: When?

Mr. Graham: That is, whenever the workers left the picket line, except for the purpose of continuing, and coming back to picket later—during the course of the strike, at the time when people were being re-employed.

Whenever they left the picket line, whether they left the picket line to go into work.

The Witness: They were sent a letter by the company to say that they was going back to work on Monday, that if they did not go in to work on Monday they was going to shut down the plant. 879

Q. Of your own knowledge? A. Quite a few people brought me the letter. So I told them that they could do whatever they think is better for them.

I said, "According to our way, you want to stay out until I can see what we can do for the people."

Q. These workers left the picket line and went back to work? A. Yes.

Trial Examiner Korey: Are you referring to the testimony he gave that on the 20th of July or August the picketing [367] was discontinued?

Mr. Graham: Well, just at the time when the pickeeters left the picket line and we want to show the fact that they left the picket line and returned to the plant.

The Witness: They were sent those letters.

Mr. Graham: That is all.

Recross Examination:

Q. (By Mr. Mann) You say that the company sent a letter to the employes requesting them to come back to work and that if they don't come back to work, they will shut down the plant? A. Yes.

Q. Did you see that letter? A. I have some letter—

Q. You have such a letter? A. Letter—people brought it to me.

Q. Mr. Graham now is looking at a letter. Will you take a look at it, and see whether that is the letter you mean?

(The witness looks at a paper.)

Q. Is that the letter? A. That is the letter.

Mr. Graham: I offer that letter as a Board Exhibit.

(Thereupon, the document above referred to was marked as Board's Exhibit No. 9 in evidence.)

Mr. Mann: You are offering the letter and the envelope [368] attached bearing the address of Maria G.

Purgatorio, 234 Tillory Street, Brooklyn, showing the postmark as August 27, 1937, at 5:30 P. M., and the envelope indicating the heading of the National Licorice Company, Bridge and John Streets, Brooklyn, New York, and the letter indicating the same thing. 883

No objection.

Trial Examiner Korey: There will be no objection to that letter being marked in the evidence.

Q. (By Mr. Mann) Now, when you testified to Mr. Graham a few moments ago, you said that the company had sent a letter to the workers, asking them to come back to work, and the letter said that if they do not come back to work, the company would shut down the plant; is that what you said? 884
A. Yes.

Q. Now, Mr. Graham has just showed you a letter which has been marked as Board's Exhibit 9, and that is the letter which you referred to when you answered Mr. Graham; is that right? A. No, that is what I referred to—the girls when they told me they received the letter.

Q. Oh, the girls told you that? A. No.

Q. Didn't you see the letter? [369] A. Yes.

Q. You got the letter from the girl Maria G. Purgatorio? A. No.

Q. Did you read it? A. Yes. 885

Q. Well, you see it does not say anything in there about shutting the plant, does it? A. Well—

Q. Does it say anything there about shutting the plant? A. No.

Q. Did you want us to understand that the letter contained a statement that the plant would be shut, in spite of the fact that the letter does not say any such thing? Did you want us to believe that? A. No.

Q. You never heard anybody say that the plant would be
886 shut, did you? A. Yes.

Q. Your testimony was you saw it in this letter; is that right? A. The girls told me—even Mr. Healy told me.

Q. After the girl told you that and she gave you the letter, you saw that the girl did not know what you were talking about, did you? A. I took it for granted, because Mr. Healy told me [370] himself they were going to shut down the plant.

Q. But the letter that the girl showed you indicated clearly that there was no statement by the company that, if the workers did not come back to work they would shut
887 down the plant? A. Well—

Q. Did it? A. Right.

Mr. Mann: That is all.

Mr. Graham: That is all.

Trial Examiner Korey: We will recess for lunch now, gentlemen.

(Thereupon, at 12:45 o'clock P. M., a recess was taken until 1:45 o'clock P. M.)

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[371] AFTER RECESS

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(Whereupon, the hearing was resumed, pursuant to recess, at 1:45 o'clock P. M.)

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record. You may proceed.

Testimony of Nicholas Andretta—Direct.

NICHOLAS ANDRETTA a witness called by and on behalf of the National Labor Relations Board, being first duly 889
sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Graham) Are you employed at the present time, Mr. Andretta? A. No, sir.

Mr. Mann: "Are you employed at the present time?"
Mr. Graham: Yes.
Mr. Mann: The answer is "No"?
Mr. Graham: The answer is "No." 890

Q. (By Mr. Graham) Where were you working last? A. National Licorice.

Q. When did you stop working there? A. At the time of the strike.

Q. How long had you worked there prior to the strike? A. Seven years.

[372] Q. In what capacity had you been employed? A. Panman.

Q. How long had you been employed in that capacity? A. Seven years.

Q. You had worked there as a panman for the duration of your employment by the company? A. Yes. 891

Q. Were you present at a conference held in the plant, in the lunch-room thereof, on the 16th of July? A. Yes, sir.

Q. Can you tell me who else was present at that conference representing the company—who was present at that conference representing the company? A. Mr. Sandford, Mr. Healy, Mr. Smiley, Chief Engineer, the foreman and foreladies.

Mr. Mann: Louder.

892 Trial Examiner Korey: What date is that?

Mr. Graham: That was on the 16th of July.

Q. (By Mr. Graham) Now would you relate in your own words what happened at that lunch room meeting? I will ask you specific questions if you prefer. A. About 3:30 in the afternoon, at my work, I was told to go into the lunch-room.

Q. By whom were you told? A. By my foreman. I went into the lunch-room and a. [373] majority of the factory workers were in the lunch-room at that time, and I went in there—and I went in and I waited in the lunch-room for a 893 little while.

Mr. Mann: A little louder.

Trial Examiner Korey: Don't be afraid to talk up loud.

The Witness: Then Mr. Sandford came in and Mr. Healy and Mr. Smiley—I forgot to tell you before Mr. Dorsey, the superintendent, was there, too.

Q. (By Mr. Graham) What happened after that—after they came in? Did anyone address the meeting? A. Mr. Healy introduced Mr. Sandford. 894

Q. What did Mr. Healy say in his introduction of Mr. Sandford? A. I cannot say word by word what he said.

Q. What was the general purport of his remarks? A. He wanted everybody to keep quiet and listen carefully to what Mr. Sandford had to say, and he presented Mr. Sandford. That is as much as I can remember.

Q. Do you remember whether he said it is important that people listen carefully to Mr. Sandford? A. Yes.

Q. Did he say why it was important? A. Yes, concerning the workers. 895

Q. And that they must listen very carefully? [374] A. Very carefully.

Q. Then what did Mr. Sandford do? Did he make a speech or read from a paper or what? A. He made a little speech before he read from the paper, telling us why did we have to go to an outside union before consulting him.

We were one big happy family and it was not necessary for us to go to an outside union. We could have asked him for what we wanted.

Q. Then did he start to read from the paper? A. He said something else, but I do not remember; then he started to 896 read from a paper.

Q. What was the gist of what he read from the paper?

Trial Examiner Korey: If you remember. Give us approximately what substantially he said.

A. I will try to think what he said. I can just give you a brief—

Mr. Graham: That is sufficient.

Trial Examiner Korey: That is all we want.

The Witness: He said he would not recognize an outside union and he gave a speech about what it cost to produce stuff that they are making in there. Didn't make enough profit on the penny goods to meet the demands. 897

Q. Did he say anything about forming a committee? A. That was later in the morning.

[375] Q. Later in the morning? A. Later in the morning.

898 Q. Can you recall anything else that he said at this time? A. No.

Q. Well, then, going on to later in the morning, did he say anything else about forming a committee? A. He did.

Q. What did he say? A. He said, "Before I leave this room, I want you to pick your own committee, and after you pick your own committee, you come downstairs into my office and bargain with us."

Q. He said that he wanted the workers there to pick a committee and he wanted that committee to go downstairs to see him? A. That is right.

899 Q. Then did he leave the lunch-room? A. He left the lunch-room and Mr. Healy and Mr. Smiley left the lunch-room, and so did Mr. Dorsey leave the lunch-room, but the foremen and the foreladies were there.

They did not leave the lunch-room.

Q. They stayed there during the duration of the gathering? A. Yes.

[376] Q. And what transpired after when Mr. Sandford, and Mr. Healy and Mr. Dorsey had left? Did anything happen then? A. Yes, there was one fellow there who was in favor of what the boss said. One floorlady spoke to us and told us why don't we do what Mr. Sandford said.

900 Q. What was her name? A. Sadie Callahan.

Q. Callahan? A. Yes.

Q. And she said, "Why don't you do what the—" A. Boss said. She said he was right. We told her we did not want to do what the boss said.

Mr. Mann: Who is that? Who is we?

The Witness: People—the workers.

Q. (By Mr. Graham) Do you remember the names of any others who spoke that way, or was it in a general conversation, if you can recall? A. Everybody was talking down there. You don't know who to listen to. The majority all were against picking a committee right there. 901

Q. And then the group dispersed? A. Dispersed and went out of there.

Q. Now, on the 19th of July, did Mr. Dorsey, the superintendent of the plant, approach you for any purpose? That would have been three days later. [377] A. Not that I can recall.

Q. Do you recall Mr. Dorsey's having chosen a committee of 12 people, two from each floor? A. That is right. 902

Mr. Mann: I object to Mr. Graham testifying that Mr. Dorsey chose a committee. He does not know that. Just what happened? Let him tell us what he knows.

Trial Examiner Korey: Tell us, Mr. Witness, if a committee from each floor was chosen.

The Witness: Yes.

Trial Examiner Korey: And how it was chosen.

The Witness: I do not remember the exact date it was chosen; it was about ten minutes to four, one afternoon. I was about ready to get washed and go home. Mr. Dorsey approached me and told me to go down to the office, that Mr. Sandford would like to see me. 903

I went down to the office. There were ten other people down there. Ten other workers. I got down there and he was telling us—

Mr. Mann: Who?

The Witness: Mr. Sandford. He would give us an
904 offer of 5% increase, time and a half for overtime, one week's vacation with pay, to begin July 1st, 1938. The contract would expire July 1st, 1938.

Trial Examiner Korey: What contract are you talking [378] about?

The Witness: The offer that he had made called for 5% increase—

Mr. Mann: He offered them a proposition; is that right?

The Witness: Yes.

Trial Examiner Korey: That was to last a year,
905 that agreement?

The Witness: One year.

Trial Examiner Korey: This increase of 5%?

The Witness: The day he was speaking to us.

Q. (By Mr. Graham) And a week's vacation was to go into effect on the 1st of July? A. That is right.

Q. How about the 5% and the time and a half for overtime. A. To go into effect immediately, provided we signed a contract with the company.

Q. And the week's vacation was to be effective on July 1st of the following year? A. That is right.

906 Q. This was made to you in the form of an offer by Mr. Sandford? A. That is right.

Q. Did you say anything yourself as to that offer at that meeting? [379] A. I did.

Q. What did you say? A. I told Mr. Sandford that I thought he was trying to form a company union and I did not believe in company unions.

Q. Did any other worker make any other remarks at that time? A. They did, but I do not remember who did.

Q. Did Mr. Sandford reply in response to your statement that this is not a company union? A. He said it was not a company union. 907

Q. What did he say it was? A. He said it was just a contract between the worker and the company.

Q. Do you recall whether or not this lunch-room conference held in the afternoon was after Mr. Galvin of the union had come to Mr. Sandford and presented the Union's contract to him? A. What day was this?

Q. Monday, the 19th of July. A. Yes, it was after. He had made a statement pertaining to that, that Mr. Galvin was down there. He said two people came in here. He said we don't know who they are. They gave us this contract and they were skeptical of what they represented. 908

[380] Q. Now, what did Mr. Sandford suggest that you do about his offer? A. He suggested that we go upstairs at that time, speak to the workers about the offer that he had made, and come down again to his office and speak to him after we had got together.

To go down to his office—

Trial Examiner Korey: A committee, did you say?

A. He told us to go upstairs and speak to the workers about the offer that he had made, and he said that the same committee should get together. 909

Trial Examiner Korey: What committee?

The Witness: The committee that was down at the office.

Trial Examiner Korey: The people there were considered as a committee?

The Witness: Yes.

Trial Examiner Korey: Who said they were a committee?

The Witness: I believe it was a committee—picked from each department.

Trial Examiner Korey: Do you know if Mr. Dorsey picked the others?

The Witness: He went around calling on them.

Trial Examiner Korey: On each floor?

The Witness: On each floor.

[381] Q. (By Mr. Graham) So Mr. Sandford asked you to discuss this matter with the workers and then return? A. Yes.

Q. What did you reply to Mr. Sandford's suggestion? A. I told him it was too late in that day to do that—ten minutes of five when he told us. I was already there 15 minutes over my own time, and the majority of the workers were there 20 minutes over their own time, and I didn't feel it was right at that time to go to speak to the workers, and then go down to Mr. Sandford's office.

Q. Did you speak to the workers about this offer, later the next day? A. Well—

Mr. Mann: What day was that, what date?

Mr. Graham: We are discussing the 19th of July.

Mr. Mann: Is that the 19th? The day that he talked to Mr. Sandford?

The Witness: Yes.

Q. (By Mr. Graham) That was on or about the 19th of July—you are not certain? A. I am not certain what date it was, but I take it for granted it was about that time.

Q. On or about the 19th of July, this procedure occurred. Now, did you then, in conformity with Mr. Sandford's suggestion, on the following day, whether the [382] following day was the 20th or the 21st, did you then talk to any of the workers at all about the offer that Sandford had made? A. We had talked to the workers the same night. 913

Q. You talked to them the same night? A. And they were dissatisfied with the offer themselves, and nothing else was spoken about it anymore.

Q. And in the morning the matter was not mentioned again? A. No.

Q. Now, on the next day—the one following the morning on which the matter was not mentioned do you know of your own knowledge whether a similar committee was chosen? A. There was a committee chosen from the people who were down at the office—the people that he had called on in the office the day before,— 914

Mr. Mann: Wait a minute, I object to that. There was a committee chosen. I have never heard of a more broad conclusion in my life than that. Let us hear what happened. This man does not know what was done. What does that mean, "There was a committee chosen"? Who do all of that? Who had anything to do with it? 915

Trial Examiner Korey: Who chose the committee, do you know?

The Witness: Tom Dorsey, the superintendent.

Trial Examiner Korey: Tom Dorsey, the superintendent.

[383] Q. (By Mr. Graham) Do you know who was on the second committee, or who was in this second group?

Mr. Mann: Now I object to this—I haven't heard about a first committee yet.

Mr. Graham: The first committee is the committee as to which there has been testimony—

The Witness: I called it a committee, but I should not.

Mr. Mann: I don't know what you called it—I want to know what happened.

Trial Examiner Korey: A group was called on or about the 19th?

The Witness: Yes.

Trial Examiner Korey: This is about the 21st—two days later. You saw Tom Dorsey choose a committee?

The Witness: Right.

Trial Examiner Korey: Where did he choose them from?

The Witness: Some of the workers.

Mr. Mann: Now I object to anything that Tom Dorsey did, unless it can be shown that he did this with the authority of the Respondent, that he was somebody in authority in the Respondent's office.

Trial Examiner Korey: I overrule the objection.

Mr. Mann: I except.

Trial Examiner Korey: Dorsey is a superintendent here.

Mr. Mann: And I further object to it unless this mar [284] talks from personal knowledge; not from hearsay. I am trying to find out what he knows.

Q. (By Mr. Graham) Did you see Dorsey choosing any people for the second group? A. No.

Q. You didn't?

Mr. Mann: I move to strike out his testimony.

Trial Examiner Korey: Did he speak to you about it?

The Witness: No, the people that were on the committee told me that Mr. Dorsey told them.

Mr. Mann: I object to what the people on the committee told him.

Trial Examiner Korey: I will allow it.

Mr. Mann: You what?

Trial Examiner Korey: I will allow it.

Mr. Mann: I except.

Q. (By Mr. Graham) When did you first see this second committee?

Mr. Mann: Can we get the names of some of the people who told him this?

Trial Examiner Korey: Who told you, if you know.

The Witness: Bill McCann, Eddie Grace, Louis Moscola.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Let's see if we can get through [385] with this. Proceed.

Q. (By Mr. Graham) You mentioned three names of individuals who told you about the second committee; were there any others who told you about it? A. Carmella Tesora; I can't remember anymore.

Q. You are listing the people who were on the second group? A. That is what you wanted?

Trial Examiner Korey: Yes.

Q. (By Mr. Graham) When did you first have any contact with this second group—personally. A. On that date you mean?

Q. Yes. A. 1:30 in the afternoon.

Mr. Mann: What date?

Trial Examiner Korey: That is about the 21st of July we are talking about.

Mr. Graham: 21st or 22nd, depending—

Trial Examiner Korey: On or about.

Mr. Graham: On or about the 21st or 22nd.

Mr. Mann: 1:30 in the afternoon?

The Witness: Yes.

Q. (By Mr. Graham) What happened at that time? A. I was speaking to Louis Moscola, and I asked him what was the matter and he said that he was supposed to go around [386] the factory with some sort of a paper—statement—I don't know how you would call it—to get the people to sign that paper.

Q. He said that he had been given a paper and that he was to take the paper around the plant for the employes to sign? A. Something to read and to sign.

Q. Did he ask you to read and sign it? A. He came down and asked me about it, so I told him to go upstairs and look at that paper again and read it over before you sign anything.

Q. You told him to read it himself? A. Yes. He went upstairs and he read it over. He told the rest of the committee to read it over. And they decided not to sign that paper. They scratched their names off it, and the rest of them who had signed the paper wanted to know why they scratched their names off it, and he told them that he did not like the way a certain paragraph was listed on that paper.

That is the reason he was scratching his name off it. So the rest of them scratched their names off.

Q Now, do you know personally whether or not any representative of the company went with this committee when they were asking for signatures? A. I know Mr. Dorsey went up to the fifth floor with them [387] and then he left them at the fifth floor. He told them to start on the fifth floor, down.

Q. Do—did you see a bulletin on the bulletin board of the company on that day? A. I did not see any bulletin board—posters on the bulletin board.

Q. Did you see a bulletin outside anywhere else about the plant, relating to the Union? A. No. It was posted after I left.

Q Did you read the paper which was being taken around on the second of these two occasions? A. No.

Q. And you don't know what it contained? A. No.

Q. Did you describe the occurrences that took place during that day to Mr. Anderson?. A. I did, I believe.

Q. You did give such a description to Mr. Anderson? A. I did.

Q Does this paper refresh your recollection as to what occurred and what you told Anderson?

Will you glance over that and tell me whether or not it refreshes your recollection as to what you told Anderson?

(Handing paper to the witness.)

[388] A. Yes.

3928 Q. Is your recollection refreshed? A. Yes.

Q. As to what you told Mr. Anderson? A. Yes.

Q. Will you state briefly what you reported to Mr. Anderson as to the events that took place on this day? A. Well—

Mr. Mann: I object to what he reported to Anderson as being immaterial and not binding on us.

Q. (By Mr. Graham) Well, will you state what actually occurred?

Mr. Mann: I object to that as being immaterial.

3929 Trial Examiner Korey: We will allow it,—what actually occurred at the plant that day?

Mr. Mann: This is the 21st of July?

Trial Examiner Korey: On or about the 21st.

The Witness: This is the same day that I was speaker.

Q. (By Mr. Graham) This is the day of the second group, the day that you have just finished discussing. A. As I was saying before, the committee had been scratching their names off, and the rest of the people had scratched their names off. They took the paper back to Mr. Dorsey down through the

3930 shipping floor and they waited there a half hour before they seen Mr. Dorsey.

[389] When they seen Mr. Dorsey, Mr. Dorsey asked them how they made out, so they told him they resigned; they did not want to go around the floor any more.

Trial Examiner Korey: Resigned from what job?

The Witness: No, from getting the names from that group.

Trial Examiner Korey: That group or committee?

The Witness: Yes, so he told them—he took the paper from them and he told them to wait. They waited about ten minutes until he went in, and I presume to Mr. Sandford's office. 93

Then he came out again and he said, "It is O. K.; it is all off."

I went home about four o'clock and I do not remember what else went on that day, after I left anyway.

Q. (By Mr. Graham) Now, when did you arrive at the plant on the 2nd of August, the day of the strike? A. Before 7:30. 93

Q. Before 7:30. Now, will you relate in your own words what occurred on that day up until the time when the men left the plant at about 4:30 that afternoon—four or four-thirty? A. That morning I was a little early going to work. I got down to Bridge Street—Bridge and Summit Street—at seven o'clock, and I seen Mr. James Landriscina on that corner, [390] so everyone in the plant at that time—all the workers in the plant at that time were worried about what the Union officers were doing with our bosses, so I said to Mr. Landriscina—asked him what the Union is waiting for.

The people—they do not want to wait any more, so we—so he told me that there would be a conference at a future day, which he did not know. 93

I told him the Union had better shake out of it, because the people were getting fed up with it. They did not want to wait any more. They would just stop working. He told me to try to stop them from doing that because it is not the rule of the Union to pull a strike.

Mr. Mann: I move to strike that out. The question
9934 is what they did here.

Trial Examiner Korey: Well, strike that out.

Q. (By Mr. Graham) Continue. A. So I left Mr. Landriscina and I went in to work. I start a half hour before the girls work; they start working at eight o'clock.

About ten o'clock that morning I heard quite a few girls speaking amongst themselves, working without any ambition, and I figured something was wrong.

And at noon hour I went down to punch my card at 12:15 and quite a few workers—they were punching their cards
9935 and walking along towards the back of the building, and they [391] asked me—there was quite a few men who had seen me in the morning speaking to this Mr. Landriscina. They asked me what he had to say.

So I told them that I don't know when the Union officers were going to speak with our bosses. So they said, "We waited long enough. We are not going to wait any more. We refuse to work this afternoon."

I told them that is no way to do business. Go back to work and Mr.—and see Mr. Landriscina at night.

They said, "No, we won't go back to work." They stayed there and would not work.

9936 So one by one they all came down and they all went to the back of the building and never went to work when the 12:30 whistle blew.

Q. Where did the employes go at that time? A. At the back end of the shipping floor.

Q. At the back end of the shipping floor? A. And which is the receiving floor.

Q. Will you describe briefly the physical set-up of the plant there? Is that a hall? A. No. That happened to be a place where they stored empty wooden boxes.

Q. Something of a storage room? A. Yes.

Q. How do you enter that room? Are there doors in that [392] room from the front and the back? A. Yes, in the back of it toward the street is a sliding door—a sliding door, and on the side of it is a door which gives access to the whole building—the same way at the front and in the back it is level with the street, where the front is two stories—it is one story above the street.

I don't know how it is built; I guess it is on a hill.

Q. Now, as you were standing there, the workers—what did you talk about? A. We talked about why we don't go back to work.

Q. What was the next thing that happened, aside from that general conversation? A. That gate was closed in the back.

Q. You mean it was closed at that time? A. Yes, just the gate was closed, but the sliding doors—that was open.

Q. It was open? A. And about ten minutes later—it is ten minutes—about five minutes after 12:30 whistle blew, the receiving clerk came to the back and shut the door with the lock.

Q. Who is the receiving clerk? A. John Flanagan.

Q. He came and locked the door? A. That is right.

[393] Q. Were you in a position to see when he locked the door? A. We all seen him—everybody standing there saw him.

Q. How did he lock the door? A. Closed the door, and put a lock on it.

Q. A padlock? A. A padlock.

Q. Did anyone speak with Mr. Flanagan? A. They asked
940 him why he is closing the door. He said, "These are my orders."

Q. Did he do anything else? A. Then he walked away.

Q. Did you see the ice cream man? A. Yes.

Q. When did he appear? Was he there all the time? A. He just happened to pass at that time and a few girls wanted ice cream, through the broken screen in one of the windows.

We can just about buy the ice cream from him and take it through the broken screen.

I seen that so I went over and was speaking to him and told him to do me a favor if he can. I gave him a nickel to
941 call up the Union office and tell them that the people refuse to go back to work.

Q. Now you mention in your description of the storage room that there was a back door as well as a front door; is [394] that correct? A. Front door is way down the other end.

Mr. Mann: May I interpose this objection? This is the worst waste of time I have seen. The man admits that the workers refused to go back to work, that they gathered themselves in the back end of the shipping floor, something they had no right to do.

942 They were there to work, and not to sit down at the back end of the shipping room at 12:30, and not go back to their duties.

A lot of time is being wasted. Why is that important?

Trial Examiner Korey: He is asking him about the description of that room and the back doors.

Mr. Mann: Suppose he is. These people had no

right to go into the back end of the shipping room. Everybody knows that. He himself says that they would not go back to work. 943

Trial Examiner Korey: That is true, but nevertheless, before the whistle blew at 12:25, approximately, Mr. Flanagan, in charge there, said he had orders to close the doors and put a padlock there.

Mr. Mann: Suppose he did. Are we to be blamed for that because they did not go back to their work?

Trial Examiner Korey: Somebody is to blame for putting a padlock on there on the inside. I think we are [395] wasting more time discussing it. We will continue with the examination and allow the question. 944

Mr. Mann: Exception.

Q. (By Mr. Graham) You have testified also there is a front door leading into this room; is that correct? A. Yes.

Q. Will you tell me whether that front door is normally kept locked, and at what time it is normally unlocked?

Mr. Mann: I object to that as immaterial, whether it is locked or unlocked.

Trial Examiner Korey: Objection overruled.

The Witness: It is usually kept locked; it is usually kept open at 12 or 12:30 for people to have lunch and get back. 945

Q. (By Mr. Graham) During the day it is usually unlocked between 12 and 12:30, so people can go out for lunch? A. Yes. In the morning and at night it is also unlocked.

Q. In the morning and at night it is also unlocked? A. Yes.

Q. Is anyone stationed at that door during the time it
946 is unlocked? A. There is.

Q. Was this door locked, or was anyone stationed at it during the time of the strike on the afternoon of the 2nd [396] of August? A. There was someone stationed there.

Q. There was someone stationed there. Did you see any guards on the day of the strike? A. I did.

Q. How do you know they were guards? A. They told me they were guards—Mr. Smiley.

Mr. Mann: August 2nd you are talking about?

Mr. Graham: Yes.

947

Q. (By Mr. Graham) Will you describe the incident in which the guard—in which instance Mr. Smiley made that statement? A. At about four o'clock that afternoon I seen four or five men come in on the floor—the majority—at this time the majority of the women went home and men were still on the floor.

Mr. Mann: That was about half-past three, wasn't it?

The Witness: Half-past three, a quarter to four. I seen these men come in on the floor and Captain Richter from the 84th precinct—so Captain Richter
948 told me—me and the rest of the men on the floor—it was not necessary for us to stay there.

I says, "I know it is not necessary for us to stay here; we are going home."

So one of the guards spoke and told us that if we [397] didn't go out peacefully, they would have to use force. That is where Captain Richter corrected

him. He told him that if anybody had to use force, it will be the police officers.

So I told Captain Richter who the men were, and he told me they were guards. 949

Q. You said you told him. A. I asked Captain Richter, so he said these guards were sent there by the company. I said, "How do you know?" He said, "I know they are sent by the company."

I said, "You are right there."

Q. Had Captain Richter responded to that question? A. So Captain Richter told him to go down and ask the person who hired him to throw us out of the place. So one of the guards went down and came up with Mr. Smiley. 950

Mr. Mann: Just a moment. I object to all of this, Mr. Examiner, for the reason, first of all, there is no word about this in the complaint.

It is no unfair labor practice also to have guards where they staged a sit-down strike. What are we supposed to do, look at them? Why waste time with this?

This has no part in the issues, Mr. Examiner. It is not in the complaint. It has not a thing to do with anything in the Act. 951

It is just a little local color, or window dressing. [398] It does not mean a thing to you. You are not going to pass on that. I am sure about that.

You are not going to make any findings on that. I will concede, for his sake, that when they staged a sit-down strike, they engaged guards. And they were there for a long time.

It cost us plenty of money to pay the guards, and we did that to protect our property. Now, if that satisfies them, let them forget about it. Go on to something more important, which is alleged in the complaint. Let them prove something in the complaint.

They haven't done anything along that line yet. They wasted three days, and there is nothing proved as yet under this complaint. That is not in issue here. If they can show me one word about hiring guards in referring to the Act, and show us it is in the complaint, I will withdraw my objection and apologize to everybody here.

Now, I suppose after all this time is wasted, I am going to be rushed through my case and be compelled to finish it within a day or two.

I am calling it to your attention now, so that it should be fully understood that all this time is being wasted, and that I probably will be rushed.

Trial Examiner Korey: We won't phrase it, Mr. Mann, that way, because a good deal of this time was taken up by [399] cross-examination. As a matter of fact, this is very pertinent to the issue, and if you go through the complaint, you will find it is part of the issue here.

Mr. Mann: May I ask you to tell me where? Where is there anything in the complaint which is pertinent to this?

Trial Examiner Korey: It is interfering with the labor—

Mr. Mann: Is interfering?

Trial Examiner Korey: Yes.

Mr. Mann: And they staged a sit-down strike.

Trial Examiner Korey: I don't see anything about a sit-down strike. We won't go any further into the discussion of it now. I will admit this evidence and you may have your exception.

Mr. Mann: I object to any further examination of this witness about the guards and what happened to the guards, or who brought the guards, or what the guards did.

Trial Examiner Korey: You admit then, that the company hired the guards and put them there?

Mr. Mann: Certainly.

Trial Examiner Korey: We will admit the testimony, and allow it, and you may have your exception.

Q. (By Mr. Graham) When Mr. Smiley appeared, what did he say to the guards?

Trial Examiner Korey: What did Mr. Smiley say?

[400] The Witness: He told us that the company had hired these guards to see that we get off the premises without fighting. In other words—

Q. (By Mr. Graham) That the guards had been employed by the company?

Trial Examiner Korey: Do not go any further into that. The company admits that they hired the guards.

Mr. Graham: That is sufficient on that.

Q. (By Mr. Graham) Now during the conduct of the strike, were you present on the picket line during the strike?

A. Yes.

Q. Did you, while being present at the plant, during the
958 strike, see anyone purchase beer or lunches for any of the workers who were on strike?

Mr. Mann: Objected to as immaterial, whether they did or not—

Mr. Graham: I contend it is.

Trial Examiner Korey: Objection overruled. You may have your exception.

Mr. Mann: Exception.

Q. (By Mr. Graham) Did you see anyone there—any of
959 the guards or employes of the company in a supervisory capacity, purchase beer or lunches for any of the striking workers? A. I seen one of the office workers buying lunch for one of the girls—a container of beer, and I seen the leader [401] of the guards buy lunches for quite a few girls.

Mr. Mann: I move to strike it out as not being binding on us, what an office worker did, or what a guard did. They were our agents to work only.

Trial Examiner Korey: With regard to the office worker, we will strike it out, and with regard to the guards, we will allow it.

960 Mr. Mann: Exception.

Trial Examiner Korey: You may have it.

Q. (By Mr. Graham) Did you see these guards during the time when you were on the picket line mingling with picketers or talking with the picketers? A. I did.

Mr. Mann: Objected to as immaterial, whether they did or not.

Trial Examiner Korey: I will allow it.

Q. (By Mr. Graham) Did you hear anything which these guards said to the picketing workers?

Mr. Mann: Objected to as immaterial and not showing that the guards had any authority.

Trial Examiner Korey: I will allow it. You may have your exception.

Mr. Graham: Shall I repeat the question?

(The reporter thereupon read the last question.)

The Witness: I did.

[402] Trial Examiner Korey: What did you hear them say?

The Witness: I heard them tell one of the girls that it was foolish for them to be out on strike, why didn't they go back to work, that they were going to lose the strike anyway, because the boss had no intentions whatsoever of bothering with the Union officials.

Mr. Mann: I move to strike that out on the ground that anything that man said was not identified by any name or by any description—just the bare conclusion that he was a guard.

Whether he was or not, what he said was not binding upon us.

Trial Examiner Korey: Do you know the name of who this party was, the man who you called a guard?

The Witness: I just know him by his first name.

Q. (By Mr. Graham) What is his first name? A. Joe.

Q. How long was he a guard there? A. As long as the strike was on.

Trial Examiner Korey: Was he one of the men that was in the shipping room?

The Witness: No, he was there the following day.

Trial Examiner Korey: He had some sort of uniform on him?

The Witness: No, civilian clothes.

[403] Trial Examiner Korey: Did he have any identification at all as to whether he was a guard?

The Witness: No.

Trial Examiner Korey: Badge or anything?

The Witness: No.

Trial Examiner Korey: How do you know he was a guard?

The Witness: Well, they were stationed all over the factory. I took it for granted they were guards.

Trial Examiner Korey: Do you know of your own knowledge that he was a guard—how do you know he was a guard? Did he say anything to you about being a guard?

The Witness: He didn't say anything about being a guard; he was waiting—he was watching the plant.

Q. (By Mr. Graham) Was Joe present on the 2nd of August, inside the— A. No, sir.

Q. He was not present. He came later? A. Yes.

Mr. Mann: I move to strike it all out, Mr. Examiner.

Trial Examiner Korey: Well, that part of the testimony we will strike out.

Q. (By Mr. Graham) You saw this man, whom you refer to as Joe outside during the duration of the strike? A. Yes.

Q. Can you tell us where Joe was stationed? [404] A. He was stationed at the entrance to the office of the company.

Q. Was he stationed on company property? A. Yes.

Q. And he stayed there during the strike? A. Yes.

Q. And was stationed there during that strike; is that correct? A. Yes.

Trial Examiner Korey: Did he question anybody going in and out?

The Witness: I don't think he did.

Trial Examiner Korey: Did he stop anybody going in and out?

The Witness: The only people that did go in there were the office workers. He didn't stop them, I don't think.

Trial Examiner Korey: Did you see him stop anybody?

The Witness: No.

Q. (By Mr. Graham) You say you have worked in the plant for approximately seven years; is that correct? A. That is correct.

Q. And in the course of your employment had you become familiar with the faces of the other employes? A. That is right.

[405] Q. And if anybody who appeared at the strike was not an employe, would you immediately recognize him as being someone who was not an employe? A. That is right.

Q. And was Joe such a person? A. That is right.

Q. Do you know how many others there were—whom you described as guards stationed on company property during the strike?

Mr. Mann: I object to it. It is immaterial. I told
970 him already that I will concede we had guards, and if he wants to know the exact number, Healy will give it to him.

Mr. Healy: It was reduced. They varied from time to time. I can produce this information from our records, if you care for it.

Trial Examiner Korey: Approximately, Mr. Healy. The first few days how many guards did you have on guard?

Mr. Healy: I imagine we had three on in the evening, and perhaps three in the day. There was violence
971 later, so we put a few more on.

Trial Examiner Korey: What was the most that you ever had?

Mr. Healy: I should think eight—that is approximately right.

Trial Examiner Korey: Eight. All right.

[406] Mr. Graham: That is all.

Cross Examination:

Q. (By Mr. Mann) You say you are not employed at the present time? A. No, sir.

972 Q. How long out of work? A. Since the day of the strike.

Q. That is August 2nd?. A. That is right.

Q. Have you made any attempt to get any work since the 2nd of August? A. Yes.

Q. What attempts have you made? A. Looking for work in the morning.

Q. Looking for work in the morning? A. Yes.

Q. Can you name any places that you went to looking for work?

Mr. Sklar: That is objected to, Mr. Examiner, as being immaterial. It does not even affect the man's credibility, because he testified that he was one of the strike committee.

Mr. Mann: I think it is admissible for that very reason.

Trial Examiner Korey: As a matter of fact, is there [407] anything here which is discriminatory? There is no charge of discrimination.

Mr. Mann: No, nothing at all.

Trial Examiner Korey: The man said he went looking for work. I don't think you ought to go any further into that, Mr. Mann.

Q. (By Mr. Mann) Aren't you working for the Union? A. No, sir.

Q. You don't seem to be so sure of your answer. A. Well, I help them out once in a while.

Trial Examiner Korey: Do you get paid for it?

The Witness: No, sir.

Q. (By Mr. Mann) You don't get any pay at all? A. No, sir.

Q. Not even your lunch money? A. They buy my lunch.

Q. What else do they buy besides your lunch? A. That is all.

Q. Are you married? A. Yes, sir.

Q. Got any children? A. Two.

Q. What are they living on?

Mr. Sklar: Objected to as immaterial.

Trial Examiner Korey: Sustained.

[408] Mr. Mann: Exception.

Q. (By Mr. Mann) Where do you report at the Union office? A. 194 Park Avenue.

Q. You have been going down there every day, haven't you? Since the strike? A. That is right.

Q. And do you get down there early in the morning? A. That is right.

Q. What time do you report there? A. Eight o'clock.

Q. And you stay there until what time? A. Whenever I feel like going home.

Q. What is the latest you stay? A. Nobody is holding me back there. I usually stay until five or six o'clock.

Q. What is the latest? A. Five or six o'clock.

Q. Every day? A. Every day.

Q. And you now tell us you don't get any pay for that? A. I do not.

Q. That has been going on since August 2nd? A. That is right.

Q. And you have a wife and two children? A. Yes.

[409] Q. And what you just said is the truth? A. It is the truth.

Q. Now, you say you were present at the conference in the plant on July 16th; is that right? A. That is right.

Q. At that time Sandford, Healy, Smiley, and the Chief Engineer were there. What is the Chief Engineer's name? Do you know? A. Jack Donovan.

Q. And Mr. Dorsey was also there? A. That is right.

Q. Who was your foreman? A. August Ruggieri.

Q. Your foreman told you to come in to the lunch-room on July 16th; is that right? A. That is right.

Q. And you came down there and you waited for a while and then you saw Mr. Healy? A. Not only Mr. Healy. 979

Q. Mr. Healy first introduced Mr. Sandford? A. That is right.

Q. And there were other workers there? A. Yes.

Q. How many were there, would you say, approximately? A. A majority.

[410] Q. What does that mean—about more than 50? A. Practically all the plant, except the office workers.

Trial Examiner Korey: Was there more than 100 there?

The Witness: Yes. 980

Q. (By Mr. Mann) This was in the lunch-room, right? A. Yes.

Q. And somebody said, "Everybody listen to Mr. Sandford. He is going to say something." A. Yes.

Q. And then you say Sandford said, "Why did you have to go," or "Why did you have to go to an outside union before consulting me"? Is that one of the things he said? A. I believe so.

Q. Then he said he would never recognize an outside Union? A. Yes.

Q. Did he say that or did he say he would not make a 981
contract with an outside Union? A. He would not recognize an outside Union.

Q. Do you know what that means? What is your understanding of not recognizing a Union?

Mr. Sklar: Objected to, Mr. Examiner.

Trial Examiner Korey: I will sustain it.

Mr. Mann: Exception.

Q. (By Mr. Mann) Did he say he would not make a contract with an outside Union? A. He did not mention a con-
982 tract.

Q. The word "contract" was not mentioned at all? A. Not pertaining to the Union.

Q. This was on what day? A. The 16th.

Q. Did he say anything about the Wagner Act at that time—Mr. Sandford? A. I don't remember.

Q. Don't you remember his using the words "The Wagner Act"? A. I can't recall.

Q. Did he say that under the Wagner Act the law requires employers to do certain thing ? A. I am not sure.

983 Q. Do you remember his saying, "Some of our employes may be wondering what their rights are under the Wagner Act?" A. That is right.

Q. Now you remember that he used the words "Wagner Act"? A. If you read it off the statement that he read, then I will remember it.

Q. How do you know I am reading it off a statement he read? A. That is the exact words he was using.

Q. You remember that very clearly? [412] A. Yes.

Q. Did he say "We are in complete agreement with the theory of collective bargaining"? A. He did not.

Q. You don't remember that? A. No—

984

Mr. Sklar: I object to that particular remark, because the witness said he did not say it, not that he does not remember it.

Trial Examiner Korey: The record will speak for itself, Mr. Sklar.

Q. (By Mr. Mann) Did he say, "We have no objections to your being in a Union or not, as you see fit"? A. He did.

Q. Did he say that under the law, "we cannot discriminate against you, because of any Union activity"? A. That is right. 985

Q. Did he say, "We cannot discriminate against you under the law, because you may happen to be a member of a Union or not be a member of the Union"? A. He did.

Q. And when Mr. Graham was asking you about what Mr. Sandford said, you told—you did not tell him all these things, did you? A. You don't expect me to remember that.

[413] Q. He asked you for a conversation, or he asked you what Mr. Sandford said, didn't he? A. I can't remember everything he said when he was reading off a paper.

Q. He asked you what Mr. Sandford said. A. He did. 986

Q. And the things I just read to you, which you now admit he said, you did not tell to Mr. Graham. A. Probably if Mr. Graham had that paper, he would read it off to me, and I would remember it, too.

Q. Were you trying to tell Mr. Graham everything that you remembered, or were you stating just what things which you thought might do him any good?

Mr. Sklar: I object to that question.

Trial Examiner Korey: It is cross-examination.

Mr. Graham: May I ask Mr. Mann to offer that in evidence. 987

Mr. Sklar: I want to offer it, Mr. Examiner.

Mr. Mann: You can't offer any paper that I have. You didn't offer any papers that I asked for that Mr. Galvin has, did you?

Q. (By Mr. Mann) Mr. Sandford at that time talked about the product that the company was making, didn't he? A. That is right.

Q. And the fact that he was in a business and that the
988 [414] company was in a business that was really making penny goods. A. Penny goods and other items.

Q. And he also said that because of that the profit was not so big; didn't he say that—the type of merchandise that they were making and manufacturing? A. Yes.

Q. And that was one of the reasons why he could not meet the demands that the Union had made? A. That is right.

Q. Then you said later on, he said, "I want you to pick your own committee and then come down to see me." A. That is right.

989 Q. Then you say that Sandford, Healy, Smiley, and Dorsey left the lunch-room but the foremen and the forewomen remained; isn't that true? A. That is right.

Q. Then Sadie Callahan said that she thought the boss was right? A. That is right.

Q. Some of the people said that they thought the boss was wrong? A. That is right.

Q. Everybody was speaking? A. Yes.

[415] Q. There was a lot of commotion there? A. Yes.

Q. Would you say that the boss was right or wrong, or did you say anything? A. I told him it was no place to discuss a thing like that.

990 Q. That is what you said. Nothing really happened there except that everybody was talking? A. That is right.

Q. And—

Mr. Sklar: Objected to. The record shows what happened.

Q. (By Mr. Mann) Nothing occurred—nobody agreed to anything there, did they; is that correct? A. That is right. 991

Q. That was on July 16th? A. Yes.

Q. Now, we come to July 19th; about 3:50, Mr. Dorsey approached you. A. Yes.

Q. And he said Sandford wanted to see you? A. Yes.

Q. And then you went down with ten other workers—I mean, you went down, and ten other workers were there, is that right? [416] A. That is right.

Trial Examiner Korey: Between July 16th and July 19th was any committee formed by the employes? 992

Mr. Mann: I object to that question, Mr. Examiner.

Trial Examiner Korey: I would like to know that myself, for my own information.

Mr. Mann: On the ground that it calls for a conclusion. I don't object to your trying to ascertain the facts.

Trial Examiner Korey: I will withdraw it.

Q. (By Mr. Mann) Ten other workers were there. Can you give me their names? A. If I can remember them all, I will give them to you all: James Blasi,—

993

Trial Examiner Korey: And others.

Q. (By Mr. Mann) And at that time, July 19th, about four o'clock that afternoon, you say you went down there and ten other workers were there, and Sandford offered you a proposition of a 5% increase, and a one week's vacation with pay, and time and a half for overtime?

Mr. Graham: To go into effect July 1st, 1937, for
994 a period of one year.

Mr. Mann: Right.

The Witness: Yes.

Trial Examiner Korey: Excepting as to vacations. He testified that the vacation period could not take effect [417] until July 1st, 1938; the others to take effect at the time.

Mr. Mann: You are right.

Q. (By Mr. Mann) With what the Examiner just said, that was the proposition? A. That is right.

995 Q. Then you said that you said to Mr. Sandford that he was trying to form a company union? A. That is right, yes.

Q. And Sandford said it wasn't a company union; it was just a contract between workers? A. That is right.

Q. You aren't a lawyer, are you, Mr. Andretta? A. No, sir, if I were I would not be here.

Q. Well, at any rate, you and Sandford had a sort of dispute as to what this was that was going on; you thought he was trying to form a company union and he thought he was not? A. That is right.

Q. And then Mr. Sandford suggested that you go upstairs and speak to the workers and then come back and tell him,
96 and then you testified that it was almost five o'clock and you told Sandford that it was too late. A. That is right.

Q. But then you said in your testimony, in answer to Mr. Graham's question, you did talk to some of the workers that [418] night, and they were dissatisfied; is that true? A. That is right.

Q. Now, you say there was a committee chosen by Tom

Dorsey—when was this? A. The day after—I don't remember now. 997

Q. Would you mean to say by that around July 20th or the 21st? A. July 20th or 21st, or something like that.

Q. And then you said in answer to Mr. Graham that some of the people on the committee told you that Mr. Dorsey chose them or selected them? A. That is right.

Q. And the people that told you that were Bill McCann, Louis Moscola, Eddie Grace, and Carmella Tesora? A. That is right.

Q. Did you see any committee chosen by anybody? A. No, sir.

Q. Did you see any committee doing anything there, or talking to anybody—any of the bosses? A. I did not. 998

Q. Don't you know, as a matter of fact, that whether there was or was not a committee, as you talked about, on July 21st or 22nd, that that committee never did anything; isn't that true? A. That is right.

[419] Q. And the workers were not affected by anything that that committee did or tried to do; isn't that true?

Mr. Sklar: Objected to, Mr. Examiner.

Trial Examiner Korey: I will sustain the objection.

Mr. Mann: I except.

999

Q. (By Mr. Mann) There were no differences in your wages, in your hours, and in anything that you did either before July 22nd or after July 22nd, until August 2nd, when the sit-down strike occurred; isn't that true? A. That is true.

Q. And in fact, later on the names were crossed out on that piece of paper that you are talking about? A. That is right.

Q. And then you testified that on or about July 22nd, at

about 1:30, you spoke to Louis Moscola and he said that he
1000 was told to go around with a paper in the factory and get the people to sign it? A. That is right.

Q. And on that paper you say there was some signatures at the beginning, and later those signatures were crossed out? A. That is right.

Q. And you said in answer to Mr. Graham's question that the committee decided not to sign and Louis Moscola decided not to sign and the rest of them scratched their names—and [420] everybody scratched their names off? A. That is right.

Q. As far as you know, was the paper torn up? A. I don't know.

1001 Q. You don't know what happened to the paper. You saw no bulletin posted? A. Yes, he brought it down in the office, because Mr. Dorsey took that paper and that was the end of it.

Q. You don't know what was the end of it, do you? A. That is all I saw.

Q. You never saw the beginning of it or the end of it, did you? A. That was told to me by the committee.

Q. Which one of the committee? A. Carmella Tesora.

Q. What I mean is, you never saw anything of that paper after Mr. Moscola said that the names were scratched out? A. No, sir.

1002 Q. Did you see the names scratched out? A. No, sir.

Q. Did Moscola tell you that? A. That is right.

Q. And Dorsey told you that? A. Dorsey didn't say anything.

Q. Who else told you besides Mr. Moscola? [421] A. Carmella Tesora.

Q. These are the only two, Moscola and Tesora—anybody else? A. I can't remember nobody.

Q. Were you one of the men on the committee? A. No, sir.

Q. Did this committee have any meetings? A. Not that I know of.

Q. Any place—in the factory, on the street, outside the factory? A. I don't know.

Q. When you said, "that day," you meant on or about July 22nd, the committee told Dorsey that they had scratched their names off; is that right? A. That is right.

Q. So Dorsey took the paper into Mr. Sandford and Dorsey later on came out and told the fellows, "All right, boys, it is all off." Is that right? A. That is right.

Q. Then that is everything that happened about that committee that you are talking about? A. Yes.

Q. As a matter of fact there was no committee that ever acted or ever did anything; isn't that right? A. That is true.

[122] Q. Now, on August 2nd, the workers told you when you came there that they won't go back to work, and at 12:30 you testified they all went to the back end of the shipping floor and refused to go back to work; is that the truth? A. That is right.

Q. You know that those workers were employed to work, don't you? A. That is right.

Mr. Sklar: That is objected to, Mr. Trial Examiner, as—

Mr. Mann: He knows that. Why do you object to it?

Trial Examiner Korey: We will take notice of that.

Mr. Mann: You object to everything that—

Trial Examiner Korey: Mr. Mann and Mr. Sklar; both please address the Examiner.

Mr. Mann: I apologize.

Trial Examiner Korey: We will proceed.

Mr. Mann: Excuse me; I was out of order; that is correct.

Q. (By Mr. Mann) Now, what about that gate—do you want to tell the Examiner that the gate was locked to lock in these employes? Is that what you were trying to convey by your testimony? A. That is right.

Q. That the bosses had to lock in the employes? [423] A. At the time that the workers went back—

Trial Examiner Korey: Let him answer that question in his own way.

The Witness: There is an iron gate outside that has been locked. As soon as anybody refused to go back to work, five minutes later, the receiving clerk came and closed the door, and put a lock on it.

We asked him what was the reason he put a lock on that door. He said, "That is my orders and I stick to them."

Q. (By Mr. Mann) Was there any door through which they could have gotten out? A. The doors to go in and out the back way—they lock automatically.

Q. Was there any other place through which the workers could have gotten out? A. No.

Q. They were locked in there? A. That is right.

Q. And right after that the police came; isn't that so? A. I don't know how soon after.

Q. Well, while you were there they came. A. That is right.

Q. And the police came at the request of the National Licorice Company?

Mr. Sklar: Objected to, unless the witness knows.

[424] The Witness: I don't know that. 1009

Q. (By Mr. Mann) You don't know of anybody calling the police? A. I don't know.

Q. Did any of the workers ask the police to release them from this imprisonment that you are talking about? A. I do not know.

Q. Were you on the picket line during the strike? A. Yes, sir.

Q. Up until what time? A. I don't remember the date.

Trial Examiner Korey: Approximately; you don't have to give us the exact date. 1010

The Witness: I was only on for a while and was made captain of the pickets.

Q. (By Mr. Mann) You superintended the pickets, is that right? A. That is right.

Q. During the entire strike? A. That is right.

Q. What was the last day that you were there in front of the premises superintending anybody? A. September 20th.

Q. September 20th? A. That is right.

[425] Q. How many pickets were outside September 20th, that last day, do you know? A. There were 14 girls; they were alternating picketing at that time. 1011

Q. Were there 14 girls on the picket line on September 20th? A. I said they were changing places.

Trial Examiner Korey: How many were there at one time; that is what Counsel means.

The Witness: There was always three or four.

Q. (By Mr. Mann) The highest number of pickets that
00.012 you had in front of these premises was prior to August 25th; is not that right? A. That is right.

Q. And there was a time when there were as many as practically all the employes on the picket line, isn't that true? A. That is right.

Q. And gradually, from August 25th on that number started to dwindle; isn't that true? A. That is right.

Q. Got less and less every day? A. That is right

Q. That was because the plant was closed down from August 2nd to August 25th, isn't that true?

00.013 [426] Mr. Sklar: Objected to, Mr. Examiner.

Trial Examiner Korey: Reframe that question.

Q. (By Mr. Mann) The plant was closed down between August 2nd and August 25th—do you know that? A. Yes.

Q. August 25th the whistle blew and the plant reopened; isn't that true? A. That is right.

Q. And from that day on the workers started to come back to work; is that right, beginning August 25th? A. Not that day on.

Q. What day would you say? A. Monday, the 30th.

Q. You say the 30th? A. Yes.

0.014 Q. Don't you know some came back on the 25th? A. Two came back on the 27th.

Q. You say none came back on the 25th? A. Not that I know of.

Q. And gradually—take your day from the 27th of August—they gradually came back to work until September 20th; is that right? A. That is right.

Q. Now, by that time everybody was back to work except you and Jimmie Blasi; is that right [427] A. That is right.

Mr. Sklar: Objected to, unless the witness knows of his own knowledge. You said everyone except him.

Mr. Mann: He says yes.

Trial Examiner Korey: That is right. If you know of your own knowledge, whether they did come back, tell us.

Q. (By Mr. Mann) Didn't you just tell us that you knew of your own knowledge that they all went back to work by September 20th except you and Jimmie Blasi? A. Do you mean by all the workers, that were out on strike?

Q. That is right, which were all the workers. A. Probably some didn't go back at all.

Q. Don't you know that everybody was back there by September 20th except Jimmie Blasi and you? A. I know that I didn't go back with Jimmie Blasi, but I couldn't tell you for sure if everyone else went back.

Q. Now you were arrested in the strike, weren't you? A. That is right.

Q. And you were held in bail, weren't you?

Mr. Sklar: That is objected to.

Mr. Graham: I object to anything short of a conviction.

Mr. Sklar: He can't ask that question; it is highly improper.

[428] Trial Examiner Korey: I will sustain the objection. Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: We will proceed on the record now.

Mr. Mann: I want to show this, Mr. Examiner: He said he didn't go back to work, that he has not gone back to work, and that he is not working there now—he and another man—and I want to follow it up on the question.

Q. (By Mr. Mann) Don't you know that Mr. Healy said that he would not take back anybody to the place who had committed violence? Do you know that?

Mr. Sklar: Objected to as immaterial.

Trial Examiner Korey: If he knows it.

The Witness: I don't know that.

Q. (By Mr. Mann) Do you know whether Mr. Sandford or any other executive had made that statement? A. I don't know.

Q. And do you know that that is the reason why you have not applied for reinstatement?

Mr. Sklar: I object to the question, Mr. Examiner.

Trial Examiner Korey: We will take it. He can give us the reason why he is not re-employed.

Mr. Sklar: This man is still on strike.

Q. (By Mr. Mann) Did you apply for reinstatement? [429] A. No, sir.

Q. Did you ever go up to the plant to ask to be taken back to work? A. No, sir.

[430] Q. And the reason you did not go up there was because you were arrested—

Mr. Sklar: That is objected to.

Mr. Mann: (Continuing)—arrested for committing violence on some of the strikers, and that is the reason you did not go back? 1021

Mr. Sklar: That is objected to.

Trial Examiner Korey: I will sustain the objection as to form.

Q. (By Mr. Mann) Why didn't you go back and apply for reinstatement? A. Because Mr. James Landrescina, the organizer, told me that Mr. Healey told him that he did not want Nicholas Andretti, James Blasi, Helen Shimmintz and Carmella Tesoro back into the factory.

Q. But you know that Carmella Tesoro is back in the plant now, and that Helen Shimmintz is also back in there now, do you not? A. I understand that. 1022

Q. Why didn't you go back and ask for your job back? You don't want to go back, do you?

Mr. Sklar: I object to that, Mr. Examiner.

Mr. Mann: All right; I withdraw that; that is all.

Trial Examiner Korey: Are there any other questions of this witness?

[431] *Redirect Examination*:

Q. (By Mr. Graham) You have testified that you are not at the present time employed. I would like to ask you whether anyone is supporting you at the present time? A. Yes. 1023

Q. Who is? A. My mother-in-law.

Q. So that your family is not suffering by virtue of the fact that you are not employed now; that is, your wife and children? A. I don't get what you mean.

Q. I mean, they are being supported at the present time,
1024 are they not? A. Not as they should be, but there is no starving, if that is what you mean.

Q. Now, in the lunchroom meeting which was held on or about the 16th of October—is this correct: Did you testify that Mr. Sanford said "We are all one happy family here and I will not recognize an outside union"? A. That is right.

Q. That was your testimony. And these were the remarks that were made prior to the time when Mr. Sanford read from the paper; do you recall? A. That I couldn't tell you.

Q. Before Mr. Sanford read the paper, do you recall his [432] saying: "You all know why I am here"? A. That is
1025 right.

Q. Or "why I am here"? A. That is right.

Q. And did he also say at that time, "Why did you have to go to outsiders instead of coming to me directly"? A That is right.

Q. Now, in this same lunchroom meeting, do you know at exactly what time that meeting was called and at exactly what time you were asked to go to the meeting? A. At 3:30 in the afternoon.

Q. At 3:30 in the afternoon? A. That is right.

Q. And did you do any work after that time? A. 3:30 in the afternoon?

1026 Q. Yes. A. No, sir; my time was up at 4:00 o'clock.

Q. Were you paid on a time basis or piecework basis? A. Time basis.

Q. Was your pay reduced by virtue of your having attended that meeting, or did you receive the same pay? A. I don't remember that.

Q. You don't recall? A. No.

Mr. Graham: That is all.

[433] Mr. Mann: That is all. 1028

(Witness excused.)

Trial Examiner Korey: We will have a five minutes recess.

Mr. Mann: I don't want Mr. Landriscina or Mr. Pollineri and all of these fellows to go around talking to these witnesses.

Mr. Sklar: There is no jury here, so what are you worrying about?

Trial Examiner Korey: As a matter of fact, they should have an opportunity to consult with their witnesses. As a matter of fact, you people had them here. I think you had an opportunity to talk to them. 1029

Mr. Mann: The attorneys and Mr. Galvin, all right, but not everybody else.

Mr Sklar: I am not objecting to it

Mr. Galvin: I understand they have already been to the lawyer for the company before coming here, and they are our witnesses.

Trial Examiner Korey: Gentlemen, you don't want to go into any further discussion of that. There is a five minute recess. 1030

(Whereupon a recess was taken for five minutes, after which the following proceedings were had:)

Trial Examiner Korey: Gentlemen, you may proceed.

Hearings Before Board.

Testimony of Carmella Tesoro—Direct.

[434] CARMELLA TESORO a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Graham) Where are you employed, Miss Tesoro? A. National Licorice Company.

Q. Before I go into the examination, I would like to read to you a provision of the National Labor Relations Act so that you will feel quite free to testify as to the exact truth and to deviate from the truth in no respect at all.

It is provided in the National Labor Relations Act, under Section 8, Subdivision 4 thereof, as explained by the first sentence in Section 8—

Trial Examiner Korey: Say it loud enough so that all the girls who are going to testify can hear it,—Subdivision 4.

Mr. Graham: As explained by the first sentence—

Mr. Mann: Just a minute. I object to the reading of any provision of the Wagner Act to this witness. I think it is grossly improper. It may direct her attention to something which does not exist at the moment. I never heard in any court of law or any quasi-judicial proceeding of the reading of the text of an act to the witness before starting to examine the witness.

[435] I think it is entirely improper. I think it is entirely improper and out of place. This witness is called here to testify what she knows and to prove something in reference to this complaint.

Trial Examiner Korey: Mr. Graham, why do you wish to read that provision?

Mr. Graham: I would be willing not to read it if I would be allowed to explain to the witness the provision of the Act.

Trial Examiner Korey: Why?

Mr. Graham: I wish to have the witness understand completely that she is protected fully under the Act in any testimony that she gives here.

Trial Examiner Korey: At this stage we will dispense with that unless it becomes necessary.

Q. (By Mr. Graham) How long have you been employed in the National Licorice Company? A. Nine years.

Q. Did you sign an application for admission into the union—that is, the Bakery & Confectionery Workers Local No. 405, prior to the time of the strike? A. Yes.

Mr. Mann: May I suggest at this point that her application be taken out and shown to her?

Mr. Graham: Surely.

[436] Mr. Sklar: Let me find it while you question her further.

Q. (By Mr. Graham) Did you sign this application of your own free will? A. Yes, sir.

Q. No force was used to make you sign it? A. No, sir.

Q. Now, there has been testimony during the proceeding that on or about the 19th or 20th of July, twelve employees in the plant were appointed to act as a committee within the plant.

Mr. Mann: What date is that?

36 Trial Examiner Korey: 19th or 20th.

Q. (By Mr. Graham) On or about the 19th or 20th of July. I am referring now to the first of the two. Is this your application (indicating)? A. Yes, sir.

Mr. Mann: May I see it, please? Keep it on top, because I will ask her about it afterwards.

Mr. Graham: Now, I will return to that question in a few minutes.

37 Q. (By Mr. Graham) Did you receive a subpoena requesting that you appear at this hearing? A. Yes, sir.

Q. And where were you when you received that subpoena? [437] A. I was just going out for my lunch.

Q. Who told you that the subpoena had been served? Who told you about the subpoena? A. Well, I was only told by one of the boys to go down to the office. I was wanted in the office.

Q. Someone met you while you were going out for lunch and told you to go down to the office? A. One of the boys, yes.

Q. And when you went down to the office, who showed you this subpoena? A. Some fellow was sitting down at the 38 desk and he just called out the names that was subpoenaed, and we received them from him.

Q. And then what were you told to do? A. We were told that we had to go to the Old Post Office in New York at 1:30.

Q. By whom? A. By Mr. Sanford and C. A. Smiley.

Q. Mr. Sanford told you to go to the Old Post Office at 1:30? A. Yes.

Q. Then what did you do next? A. I went out for my lunch. I came back, washed up, and dressed up and went 1039
down to the office.

Q. What office did you go to then? [438] A. Downstairs, in Mr. Sanford's.

Q. The plant office? A. Yes.

Q. Then what were you told? A. What we were told?

Q. Yes, that second time you came down to the office. What happened then? A. Mr. C. A. Smiley told us that Joe was waiting outside with a cab and that Louis Moscola was talking to Mr. Sanford in his private office, so Mr. C. A. Smiley opened the door and Louis Moscola came out and we went out. So Mr. Sanford told us before we came 1040
down here to go up to see the lawyer. So we went to 51 Chambers Street to see the lawyer, and we were speaking there before we came here.

That is all.

Q. Do you know the names of the lawyers with whom you spoke? A. Mr. Manor and Mr. Siegel, or something like that.

Q. And will you give us a brief outline of what was said there?

Mr. Mann: She didn't speak to Mr. Siegel. Whom did you speak to?

The Witness: Mr. Manor. 1041

Mr. Mann: Mr. who?

The Witness: I spoke to you.

[439] Mr. Mann: My name is Mann, M-a-n-n. Did you speak to him? Was he in the room? (Pointing to man.)

The Witness: He came in later.

Mr. Mann: Mr. Healey also was in the room?

The Witness: Yes.

Q. (By Mr. Graham) Was there anyone else in the room,
1042 besides Mr. Mann and Mr. Healey—and Mr. Yaspan was also in the room? A. Four other people that were down with me.

Q. The other witnesses? A. Yes.

Q. Now, will you simply describe in a few words what was said to you at that time?

Mr. Mann: I object to that.

Trial Examiner Korey: We will not go into that just now.

Mr. Mann: They have no lien or mortgage on these
1043 people.

Trial Examiner Korey: I said, we will not go into that just now.

Mr. Mann: Let him ask her what she said. I will ask her what she knows about this, too. But it does not make any difference, whether I ask her in my office or in any other place, or in the courtroom, or downstairs in the street or over in the plant. I have got a right to talk to [440] people that are my workers.

I am going to call this girl as a witness, too.

Trial Examiner Korey: Let us continue.

Of course, frankly, I do not wish to make any com-
1044 ment on the company sending these witnesses over after they had been subpoenaed, to its lawyers' offices, at this time.

Mr. Graham: My only idea is to avoid distortion of the facts.

Mr. Mann: May I ask you, in view of your statement, whether you think there is anything wrong in that?

Trial Examiner Korey: I do not know; we will not go into that.

Mr. Graham: Do you rule that I am not allowed to ask what occurred in the office?

Trial Examiner Korey: At this stage, I don't think we should go into it.

Mr. Sklar: May we have an exception at this time on that, Mr. Examiner?

Trial Examiner Korey: Exception.

Q. (By Mr. Graham) Now, in the plant—

Trial Examiner Korey: You asked, I think, about July 19th or 20th; is that what you are referring to now?

Mr. Graham: Yes, I shall return to that now.

Q. (By Mr. Graham) In the National Licorice Company plant—

Mr. Mann: Mr. Graham, you are subject to the same [441] criticism as your witnesses; I do not hear you.

Q. (By Mr. Graham) Do you recall the meeting that was held in the lunchroom of the plant on the 16th of July, a meeting at which all of the employees were asked to attend? A. Yes.

Q. Do you recall what men spoke to the employees when they were there in that room? A. Mr. Sanford and Mr. Healey.

Q. Mr. Healey—which man spoke first? A. Well, Mr. Healey represented Mr. Sanford.

Q. Mr. Healey introduced Mr. Sanford as the man who was going to speak? A. Yes, sir.

Q. Do you recall anything that Mr. Healey may have said by way of introduction? A. I do not remember that.

48

Q. Then Mr. Sanford spoke to the group. Do you recall anything that Mr. Sanford said? A. All that I could remember was that he said he would not recognize any outside union. That was about all I was interested in, I guess, and that is all I remember.

Q. You stopped listening when you heard that? A. Yes.

Q. Now, after Mr. Sanford had finished talking, did he then leave the room? [442] A. Yes.

Q. Did Mr. Healey go with him? A. Yes.

Q. Well, then, what happened in there, in that room? Was there a discussion? A. Oh, yes. Mr. Dorsey was there and all the floor ladies and the floor men and so they asked us what we are going to do and so they told us to try to form our own committee and go down and tell Mr Sanford, ourselves, what we really want.

49

I was near one of the employees and turned around and said, "Why discuss it here?". Why don't we go down to the meeting—we had a meeting with some people.

Q. (By Trial Examiner Korey) A union meeting, or at the plant? A. A union meeting—and discussed there what our intentions were.

So this same party said that would be all right, go there first and find out what they had to show, and then whatever they say, people will know what to do.

50

That is what we said.

Q. (By Mr. Graham) Do you remember whether Mr. Sanford, when he spoke to the group there, used any words like this—perhaps if I give you the words that he may have actually used, they may seem familiar and you can remember them better.

[443] Did he, by any chance, say, "You all know why I am here?" "Why did you have to go to outsiders?" A. Yes. 1051

Q. "Instead of coming to me." A. Yes.

Q. Did he proceed after that to read something that he had on a paper? A. Yes.

Q. Do you remember at what time this meeting was called, what time of day? A. At 3:30.

Q. At 3:30? A. Yes.

Q. At what time did you normally stop working in the afternoon? A. Stop?

Q. Yes. When does your work— A. 4:30.

Q. Were you paid for the time you were at this meeting? A. Yes, I was. 1052

Q. Now, two or three days later, do you recall the fact—do you recall whether or not several employees were asked to go down to the office to represent the other employees in the plant? Do you remember whether you, yourself, may have been approached two or three days later and asked to go down [444] to the office? A. Yes, to go to the office.

Q. Who asked you to go to the office? A. Mr. Dorsey, the superintendent.

Q. Mr. Dorsey, the superintendent? A. Yes.

Q. And when you went to the office were there any other employees there? A. Yes.

Q. About how many were there, do you remember? A. Well, they almost all were there. The only two that were left out was me and Anna Ratto. 1053

Trial Examiner Korey: What do you mean, all the employees?

The Witness: No, the twelve that were picked out to go down to the office.

Q. (By Mr. Graham) Now, you have mentioned the names
1054 of some of them, including yourself. Do you recall the names of any of the others? A. That were down there?

Q. Yes, that were down there. A. Louis Moscola, Miss Trunitz, and Jenny Marolla and Eddie Grace.

Q. Do you remember whether William McCann was there or not? [445] A. Yes, Bill McCann was there.

Q. And do you remember whether Jim Blasi was there? A. Yes, he was there.

Trial Examiner Korey: Did you ask her who sent her there?

1055

Q. (By Mr. Graham) Who sent you down there—

I asked her that and she replied, "The plant superintendent, Mr. Dorsey,"—

That is correct, isn't it? A. Yes.

Mr. Mann: She is supposed to be telling the twelve that were there.

Mr. Graham: She has not named them all, but substantially she has.

Q. (By Mr. Graham) Now, after you assembled there in the office, do you recall just what happened? A. Well, I don't
1056 know. Mr. Sanford was talking about some people going in to see him and that it could not be done, what the people were telling him.

Trial Examiner Korey: Do you know what people he was referring to?

The Witness: No, he didn't mention any names. There were two nice young gentlemen.

Q. (By Mr. Graham) Where or what? A. No, he didn't say anything where or who they were or [446] anything, and he was saying it could not be done, what these two young— 1057

Mr. Mann: Could not be what?

The Witness: Could not be done.

Mr. Mann: It could not be done?

The Witness: Yes.

Mr. Mann: Don't holler at me.

The Witness: I am sorry if you can't hear me.

Trial Examiner Korey: Do not argue between yourselves.

1058

Q. (By Mr. Graham) What were you asked to do then? Was there any discussion of the working conditions in the plant and the wages and so forth? Did anyone read from a paper at that time, or just what occurred? A. They did read, but I don't remember what he read or what he said. I don't remember that. Of course, it is almost a month and a half ago—I don't remember that.

Q. Do you recall whether or not Nick Andretti said anything at that time? Did he say anything to you that you remember now? A. I remember something—oh, Mr. Carpentier says to him, "Why was he hollering?" that he got a $2.50 raise before he pulled the strike, and that was about 1059 a week before that, so he says, Nick says, "No one knew about it but you"—no, Mr. Carpentier says, "No one knew about it but you, and why did you pull it?" Nick said, "Don't you think I deserve [447] a little more?"

Trial Examiner Korey: Who is Mr. Carpentier?

The Witness: I don't know who he is; he is a vice president.

Trial Examiner Korey: I want it for the record, so we will know who he is, who you are talking about. Off the record:

1060

(There was a discussion off the record.)

Trial Examiner Korey: On the record. Proceed. I want it definite for the record what time she is speaking of.

Mr. Graham: You mean, what date?

Trial Examiner Korey: Yes. I am under the impression she is speaking about on or about July 19th.

1061

Mr. Mann: That is right, and she is talking about a strike.

The Witness: There was no strike pulled while were down at the office. This was before we pulled down the strike. We were called down at the office.

Q. (By Mr. Graham) At this time you were called down to the office—you were called down to the office, weren't you, before the strike, twice? A. Yes.

Q. Was this the first or the second of these two times? A. This was the first time, the twelve individuals were down in the office.

1062

[448] Mr. Mann: I am trying to get a date.

Trial Examiner Korey: He will develop that; give him an opportunity.

Q. (By Mr. Graham) Do you recall whether or not that was on or about the 19th or 20th of July—would that be about when it was? A. Yes.

Q. Then you are speaking about the first of those two times that the employees were called down? A. First time. 1063

Q. Do you recall whether or not there was any mention made of a possible 5 per cent increase in wages and a possible one week's vacation with pay? A. Yes, I think that was mentioned.

Mr. Mann: Keep your voice up.

The Witness: Yes.

Q. (By Mr. Graham) By Mr. Sanford? A. Yes.

Q. And was there a discussion of this statement of Mr. Sanford's? A. Yes. 1064

Q. And what did anyone say about the offer? A. That everybody was undecided about it, so everybody was picking on Nicky; everybody was questioning Nicky.

Q. When you say "Nicky," whom do you mean? [449] A. Andretti.

So they asked Nicky Andretti what he thought about that, so he said, "I can't answer you now. I haven't rights to answer now."

Trial Examiner Korey: Are we talking about the meeting of the twelve people before Mr. Sanford?

Mr. Graham: That is right. 1065

The Witness: Yes. So Mr. Sanford said to him, "What do you mean?" Well, he says, "I can't say anything now. I haven't the rights to say anything, and I haven't the rights to answer any questions."

That is what he said. So Mr. Sanford said—he said he had something nice for us, that he had—oh, I don't know how to express it—in store—or that there was

some kind of cards made out that we are going to get
1066 in our envelopes.

Do you understand? I don't know what it was or what it was all about.

So he said quite a few things, I don't remember. He said, "Why don't you go up there now and discuss it with the rest of the employees?"

So Nicky turned around and said, "It is too late; it is almost a quarter to five now. The employees will be going home soon. Why not wait until tomorrow?"

So that was all was said, and we went out.

1067 Q. (By Mr. Graham) Did you talk about this with any of the [450] other workers who were not in the conference after you left? Did you discuss it with anyone else? A. Of course, they were all eyes and ears to know what happened down at the office.

Q. Yes. A. So I told them.

Mr. Mann: I object to what he discussed with the other employes, Mr. Examiner.

Trial Examiner Korey: I will allow it. Mr. Sandford asked them to tell the other employes.

Mr. Mann: I except.

1068 Trial Examiner Korey: Granted.

The Witness: So I told them what Mr. Sandford really said; they said that is a lot of bull.

Trial Examiner Korey: What was that? Who was it that said that?

The Witness: The rest of the employes.

Q. (By Mr. Graham) The rest of the employes said that it was a lot of hooey? A. Yes.

Q. Indicating that they were not pleased? A. That they were not pleased.

Q. With this 5% increase and one week's vacation. Now, two days later was a second committee which was chosen—I will withdraw that and ask you: Were you approached two [451] days later by the same man? A. Yes.

Q. The superintendent, Mr. Dorsey? A. Yes, Mr. Dorsey.

Q. And do you recall at what time you were approached that day? A. About 2:30—two or 2:30.

Q. And do you recall whether you were paid for the time you spent in this second conference? A. Yes.

Q. What did Mr. Dorsey say when he came to you the second time? A. Well, he brought in a sheet of paper—about two sheets—I think they were—he told us to read it—read it carefully. So we did, so we needed collective bargaining on that.

So we were about six or eight of us downstairs. I don't remember how many there were. Sandford asked each and every one of us if we wanted to have collective bargaining, and a couple of them refused, so he turned to me and said, "How about you?".

I said, "If there is anything which could be done, I am willing to do it."

So Louis Moscola and myself, Anna Trunitz, Anna Marolla and Eddie Grace were on this committee. So we [452] signed all our names and Mr. Dorsey took us up on the elevator, up on the fifth floor.

He said, "Well, I guess we will start with that crowd first," —my girl-friend. I went over to them and told them to read over the paper—what was on the paper, and if they did like what was written on that, just to sign, so the girls all started to laugh.

They said, "What is this, another one?" I said, "All right, go ahead; if you want to sign, sign."

So each of them signed. So there was an Italian woman there; she didn't understand it.

Trial Examiner Korey: Who told you—

The Witness: Mr. Dorsey.

Trial Examiner Korey: He was there all the time that you were asking the girls to sign?

The Witness: Yes. So I explained to her what it meant, so she turned around and she said, "I don't know, but I will do what you say anyway."

So she signed it. So we got in Sweeney—he didn't want to sign first, but then I said to him, "Maybe it is even better anything else for us."

I said, "If you don't want to, I can't force you." He said, "Oh, well, well, I will sign" and he signed.

Mr. Dorsey just came as far as the back with us, then he said, "I am going to leave you girls now. I am going [453] down. When you get finished going around, I will be downstairs. I will wait down in the shipping department."

So we got through with that floor—we got about 20 people already signed on this. So we went and came out front. Louis Moscola wasn't there; he went downstairs, so all of a sudden he came up and he said, "Scratch my name out of there."

I turned around, "What do you mean by that? Don't you know your own mind? What are you doing?"

He turned around, "Did you read what it means—well 'supersede'."

I said, "What do you mean, 'supersuds'?" He turned around and said, "Read that thoroughly again," so Eddie Grace began and he said, "By golly, it is something funny here. I am going to take my name off here."

So Louis Moscola and Eddie Grace scratched their names off. So I said, "What are we supposed to be, holding the bag?"

So I scratched my name out. So the rest of us scratched their names out. So we went down to the shipping department. He said, "How did you make out?"

I said, "We resign." "Resign what?" "Resign off the committee. No one wants to go through with it any more."

He said, "Why?" "They found out something in it that didn't please them, so they scratched their names off."

[454] He said, "Well all right." He just went this way, (indicating) "I will be back."

He went in the office and took the paper with him in the office. He came out and went "Forget it."

Q. Whose office? A. Mr. Sandford's office. He turned around and he said, "Forget everything; everything is dropped."

Q. Well, now, I am going to read from this paper to you and ask you whether you recognize what I read as being the paragraph you refer to: "This committee supersedes any other group or representative of the employes."

Is that, in essence, what was in the second paragraph? A. Yes.

Q. And that was the reason why you all scratched your
1078 names off? A. Yes.
1

Q. And you therefore mean that you didn't want to have the Union superseded by this committee, and therefore you scratched your names off? A. Yes.

Trial Examiner Korey: Did you read that paper?

The Witness: Yes, I did.

Q. (By Mr. Graham) Had you thoroughly understood it the first time you read it over, or had you gone through it fairly quickly? [455] A. Well, there was quite a few words
1079 in that that I didn't understand what it was all about, but
1 Louis Moscola and Eddie Grace—they were educated boys—they ought to know what was in there, what they sign we sign.

Q. So you more or less took it at its face the first time? A. Naturally.

Q. How did you get this paper? Do you know where it came from? A. I don't know where it came from; it was down in the shipping department. I don't know where it came from or what brought it up.

Q. You didn't write it yourself, naturally; that is, you didn't draw up this paper. You hadn't written these things
1080 down? A. No.
1

Q. Did you write the paper yourself—I don't mean sign it—write out all the provisions? A. No.

Q. You did not? A. No.

Q. Do you know whether the paper was typewritten or whether it was mimeographed, or whether it was printed? A. It was typewritten.

Q. It was typewritten. Where did you actually get this [456] paper? In whose office were you when you first saw this paper? A. In the shipping clerk's office.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record. You may proceed.

Q. (By Mr. Graham) Now I would like to have you answer a few questions about the day of the strike, the 2nd of August:

When did you come to work on the day of the strike—I will withdraw that question. Were you on the picket line at any time during the strike? A. Every day.

Q. You acted as a picket every day during the strike? A. Yes.

Q. Well, now, when you were acting as a picket, did you see any one stationed around the plant who was a guard and who was not an employe? A. Yes.

Mr. Mann: Objected to on the same grounds that I objected on the other previous witness.

Trial Examiner Korey: How do you know he was a guard?

The Witness: Well, he told me himself he was a guard.

Trial Examiner Korey: I will allow it.

[457] Mr. Mann: I still object to it on the ground that the statement of the guards is not binding upon us.

Trial Examiner Korey: Was he at that place, watch-
084 ing that place?

The Witness: Yes.

Trial Examiner Korey: How often was he there? How often did you see him there?

The Witness: From the morning until the night.

Trial Examiner Korey: For how many days?

The Witness: Until the strike ended—until we went in.

Trial Examiner Korey: I will allow it; you may have your exception.

085 Q. (By Mr. Graham) Now when you were on the picket line did any of these guards speak to you? A. Yes. Most all of them, "Hello."—"Why don't we go in to work"—"We were darned fools to keep out so long"—"We were only wasting our time"—"We lost the strike"—"Why not go back to work."

So I turned around and said, "We can still win it by picketing it."

He said, "No, you are all washed up. You might as well go in now while your job is open. Mr. Sandford wants you all back. It is not that he has a grudge against you or don't want you. He wants you all back."

1086 [458] So I turned around and said, "I don't want to go back."

Mr. Mann: When was this?

The Witness: That was about two weeks after the strike.

Mr. Mann: About August 16th.

Mr. Sklar: Why doesn't he wait?

Mr. Mann: I want a date.

Mr. Sklar: Mr. Graham will fix a date.

Q. (By Mr. Graham) Do you know the names of any of these guards who were speaking to you? A. I only know their first names, not the last name.

Q. Could you give me their first names? A. One's name is Teddy; one is Joe; one is Al; that is all I know.

Q. One is Teddy; one is Joe; one is Al? A. Yes.

Q. You say these guards told you to go back to work, that the employer was anxious to have you go back to work, and that you were wasting your time in striking, and so forth? A. It wasn't that the employer was anxious to have us back.

Q. That he was willing. A. That he was willing to take us all back.

Q. Is there a saloon near the plant, or a place where they [459] sell beer? A. Around the corner.

Mr. Mann: What is the answer?

The Witness: Around the corner.

Q. (By Mr. Graham) Did any of these guards ever buy you any beer in the saloon? A. Me? No, not me.

Q. Did you see them buy beer in there for any one? A. Well, I wouldn't say I seen it, but they were buying lunch for the girls.

Q. Well, now, do you remember anything of special significance happening around the 3rd of September? A No.

Q. Here, perhaps I can recall it to your mind. It may be easy to remember this way: Do you remember whether or not the National Licorice Company gave a party called the "Victory Party"? A. Oh, that wasn't in August 3rd.

Q. September. A. September—oh, yes. That was a grand
1090 party.

Q. Well, now, were you on the picket line at that time? A. Certainly,—I wasn't—

Q. And did you see the refreshments for the party being carried into the plant? A. Yes.

[460] Mr. Mann: I object to all this; I don't see its relevancy.

Trial Examiner Korey: Subject to connection, we will allow it at this time.

Mr. Mann: Exception.

1091

Q. (By Mr. Graham) You did see refreshments being carried into the plant? A. Yes.

Q. What were the different types of liquid and solid refreshments?

Mr. Mann: Well, now, I object.

The Witness: Beer.

Trial Examiner Korey: I will sustain that objection.

Mr. Graham: I simply want this in evidence to show what the company did in an attempt to break the strike. Very clearly the party was held for that
1092 purpose.

Trial Examiner Korey: How do you know?

The Witness: Because I seen it,—kegs of beer.

Trial Examiner Korey: Kegs of beer?

The Witness: Yes.

Trial Examiner Korey: Subject to connection, I will allow it, but I wish you would indicate what you intend to prove.

Mr. Graham: I simply wish to indicate what the company was doing at that time, all they did to break the [461] strike, and one of the things it did was to give a large party and make it attractive for the strikers to try to make them come in.

Mr. Mann: That statement is not correct; because the company was not doing everything they could to break the strike. The workers themselves broke the strike by coming back to work.

Trial Examiner Korey: Both counsel have their statements. Now we will proceed.

Q. (By Mr. Graham) At what time was this party held? A. 3:30—the 3:30 whistle blew and the work stopped.

Q. The work all stopped and the party started at 3:30? A. Yes.

Q. How long did the party last?

Mr. Mann: I object to that as immaterial.

A. About three hours.

Trial Examiner Korey: Well, I will allow it.

Q. (By Mr. Graham) Were you there when the party ended? A. Yes.

Q. Were you there when the people left the party? A. Yes.

Q. In what condition were they when they left the party?

Mr. Mann: Objected to.

Trial Examiner Korey: I will sustain the objection.

Q. (By Mr. Graham) Well, now, I would like to have you [462] describe in your own words the events that occurred and the things that happened in relation to these arrests of several of the picketers.

Do you recall that? Do you remember that several of the picketers were arrested?

Mr. Mann: Just a minute, before you answer that. If Mr. Graham will tell me with what allegations of the complaint this has any bearing, then maybe I won't object to it.

Mr. Graham: I think it would clearly be intimidation of the strikers.

Trial Examiner Korey: Intimidation and coercion.

Mr. Mann: Policemen made the arrests; that is intimidation of strikers?

Trial Examiner Korey: I don't know. She is just about to tell us what happened.

Mr. Mann: The way to prove arrests is to subpoena the police records and the police force. Then we will find out who the complainant is, who the defendant is, and what disposition was made of the case.

She does not know anything about that.

Mr. Graham: We want to get the situation at the time. Implication.

Mr. Sklar: May I ask these questions, Mr. Trial Examiner?

Trial Examiner Korey: Yes, you can.

[463] Q. (By Mr. Sklar) Miss Tesora, do you recall September 17th—

Mr. Mann: A little louder.

Q. (By Mr. Sklar) Miss Tesora, do you recall on September 17, 1937, having been in the court-room at 43rd Street and Fourth Avenue, Brooklyn? A. Yes.

Q. Was Mr. Healy with you on that day? A. Not with me; with the complainant.

Q. However, September 17, 1937. On that day was that case adjourned? A. No.

Q. What happened on that day? Was the case put over to some other day? A. Yes, it was.

Q. Now the second day that the case came on, were you in the court-room? A. Yes.

Trial Examiner Korey: When was that—approximately—get the sequence here.

Q. (By Mr. Sklar) September 17th was the adjourned day, wasn't it? A. Yes, September 17th.

Q. And at that time were you still on strike? A. Yes.

[464] Q. Did you have any conversations with anyone present representing the company before September 17? A. Yes.

Q. What day was that? A. The day before I had to go to court.

Q. And with whom did you have the conversation? A. Oh, I had a conversation with Mr. Healy.

Q. What was the conversation about? A. Mr. Healy told us that we didn't have to appear to court; that it wasn't necessary for us to go.

So I turned around and I said, "Any time that a person is subpoenaed to go to court, they have to appear whether they like it or not."

So he said it was not necessary; that he was going to take it up with his attorney in law to answer, but everything—

that everything was going to be dropped; the charges were
1102 going to be dropped against the complainant.

Mr. Mann: Against who?

The Witness: Against the girls.

Mr. Sklar: You meant the defendants.

Mr. Mann: Against who?

The Witness: Against the girls.

Mr. Mann: May we have the names of the girls who were charged?

Mr. Sklar: She has testified she was one of the girls.

1103 [465] Mr. Mann: I didn't hear her say that. Was she one of the girls?

The Witness: Yes.

Q. (By Mr. Sklar) How did it happen that you and Mr. Healy had this conversation? A. Mr. Healy was outside talking to about two or three other girls. I was there at the time.

Q. Was Mr. Smiley there? A. No, not at that time.

Q. The next day you went to court; is that correct? A. Yes.

Q. And the next day you still were on strike; is that correct? A. Yes.
1104

Q. And the case was adjourned to October 5th? A. To October 5th.

Q. Tell us what transpired prior to October 5th.

Mr. Mann: Objected to as immaterial.

Trial Examiner Korey: Same exception.

Mr. Sklar: Prior to October 5th, did you have a conversation with Mr. Healy or Mr. Smiley?

The Witness: Before October 5th?

Mr. Sklar: Yes. 1105

Trial Examiner Korey: This police court case was adjourned on the 17th—what counsel is asking you is what [466] conversation you had with either Mr. Healy or Mr. Smiley between the 17th of September and October 5th, if there was any.

The Witness: Yes, I think I remember. C. A. Smiley sent for me. I was on the other end and some fellow came out—I don't remember who it was.

Mr. Mann: Speak up.

The Witness: Some fellow came around the corner to call me, and he said that C. A. Smiley wanted to 1106 speak to me.

So I went and he wasn't there. This fellow went in the office to tell him that I was outside waiting for him, so he came up and he said he was sorry he kept me waiting.

Trial Examiner Korey: You were picketing at the time?

The Witness: Yes, and he told me—first he said, "Mollie, about tomorrow—" He says, "You need not worry, because everything is going to be dropped."

He said, "I want you all back; there is no disagreement against any one of you." 1107

He said, "Mr. Sandford and I spoke it over. We want you all back."

He said, "After all, you are all good workers, and we don't want to lose them," and all that stuff.

So I turned around and I said the same thing I had to Mr. Healy, "I had to appear in court, whether they wanted it [467] or not."

He said, "Well, all right, if you feel that way, go
1108 ahead."

But, he said, "Everything will be dropped anyway."

Q. (By Mr. Sklar) Who is the Mr. Smiley that you were talking about? A. C. A. Smiley.

Q. Who is he, do you know? Is he an officer of the corporation? A. He is the Treasurer.

Q. The next day, September 17th, you appeared in court? A. Yes.

Q. Mr. Healy was in court that day, too, wasn't he? A. Yes.

1109 Q. The case was then put over until October 5th? A October 5th.

Q. Now, as you came out,—came out of the court-room, did Mr. Healy speak with you? A. Yes.

Q. What did he say? A. I said to Mr. Healy, "What is this, a merry-go-round?" "Well," he said, "this"—this is not in court—we were coming out—"that if anyone of us were convicted at the time, October 5th, when we go to court", he said, "we would not be allowed to go back any more to our jobs."

[468] Q. Didn't he also tell you that if you went back before October 5th, the case against you would be dropped?
1110 A. If we went back before October 5th?

Q. Yes; did he tell you that? A. Well, yes, he said, "Unless"—if we don't go back to work, that meant to say we would lose our jobs before October 5th.

Mr. Mann: Tell us what he said.

Trial Examiner Korey: Tell us what he said, if you remember, in the exact words, if you remember them.

Q. (By Mr. Sklar) Tell us what Mr. Healy said to you and what you said to him. A. He told me, he said, "If there was a conviction against us"—that he wasn't allowed to take us back any more. That is what Mr. Healy said; that was before October 5th.

Q. Did he say anything in connection with your going back to work before October 5th? A. Yes, he told us that we could go back to work.

Q. Did he say anything about if you went back to work before October 5th the charge against you would be dropped? A. Yes.

Q. What? A. Yes.

Mr. Sklar: That is all, as far as that is concerned.

Q. (By Mr. Sklar) On October 4th, you had another [469] conversation with Mr. Healy, didn't you? That was the day before you had to go to court, October 5th. A. Yes.

Q. What was that conversation? A. Almost about the same thing. He said not to worry; that everything was going to be dropped.

He said, "You got to appear in court."

Q. In other words, in this case, he told you you must appear in court, October 5th? A. Yes.

Q. What did you say to him on that? A. I said, "Now we have to appear?" I said, "The last time we didn't have to."—I said, "But now we have to." So he laughed.

Q. On October 5th, you appeared in court, is that right? A. Yes.

Q. With Mr. Healy? A. No, not with Mr. Healy. We met Mr. Healy at the court-house, and Mr. Healy drove us back.

Q. You were anxious to meet Mr. Healy in court the next morning? A. Yes.

114

Q. When did you go back to work, Miss Tesora?

Trial Examiner Korey: What happened the 5th?

Q. (By Mr. Sklar) What happened on October 5th? [470] A. Well, the judge turned around and said, "Discharged, and good morning." And we went back to our work.

Trial Examiner Korey: You went to work from the court house?

The Witness: Yes, Mr. Healy drove us back to the factory.

115

Q. (By Mr. Sklar) What happened when you went back to work? A. Nothing.

Q. Did you get paid for the time that you were in court October 5th? A. No, we did not.

Q. Now, at what hour did you go back to work with the National Licorice Company on October 5th? A. We got into the plant at 25 minutes after 11.

Q. What happened when you got into the plant?

Mr. Mann: I object to all this, Mr. Examiner.

116

Trial Examiner Korey: Well, I think it is pertinent: I will allow it.

Mr. Mann: Exception.

Q. (By Mr. Sklar) When did you first return to work, Miss Tesora—what date? It was about September 20th, wasn't it? A. Yes; it will be four weeks Monday I am back to work.

Q. When you went back to work on September 20th, were you shown any contract or paper? [471] A. Yes.

Q. Who showed it to you? A. The committees.

Q. I beg your pardon? A. Mr. Sandford says that there was a contract for us to read.

Q. Did you see Mr. Sandford on September 20th? A. Yes.

Q. How did you come to see him? A. When we all made our minds up to go in to work. We had to go into his office first.

Q. What did you do first? A. He was discussing about what happened, and what we should do; we should forget everything and try to be friends again, and, he said, "One whole happy family." And he said, "I don't want anything against the girls upstairs, and the girls have nothing against you out here."

And he said, "I want everything peaceful. Everything must be forgotten", so I turned around and I said, "Well, all right, we will all forget what happened and what did not happen."

Q. What happened after that conversation with Mr. Sandford? A. So he said there was a contract for us and we should read it thoroughly before we do anything.

Q. Did he tell you who had the contract? [472] A. No, the contracts were on the table.

Q. On whose table? A. I don't know.

Trial Examiner Korey: In his office?

The Witness: Yes, in his office.

Q. (By Mr. Sklar) And he showed you a paper called a contract? A. Yes.

Q. Now, I show you this paper and ask you if it is similar

to the one you signed? (Handing the paper to the witness.)
1120 A. Yes.

Mr. Sklar: At this time I want to mark that paper for identification.

(Thereupon, the document above referred to was marked Board's Exhibit No. 10 for identification.)

Q. (By Mr. Sklar) Now, when you saw that paper, Miss Tesora, was the name or names of a committee already on there? A. No.

1121 Q. Were there any names on that paper? A. No.

Q. Before you saw it—when you saw it, before you signed it? A. No.

[473] Q. Before you signed this paper, was there any conversation had between you and Mr. Sandford about it? A. No, Mr. Sandford said the contracts were here. It was up to us what we wanted to do, and he walked out.

Q. Who was in the room? A. Just the shop committee, and the rest of the girls.

Q. In other words, the shop committee was in the room when you and Mr. Sandford talked? A. Yes.

1122 Q. Was there any other conversations had between you and any of the shop committee after Mr. Sandford went out of the room? A. Yes, there was, but I didn't pay any attention to it. I was talking to some of them.

Q. Did they tell you what would happen if you didn't sign the paper? A. I don't get that.

Q. Didn't anyone say to you—that you—that if you didn't sign the paper that you would not be securing your job? A. No, not to me, they didn't tell that.

Q. Who did they tell it to? A. I don't know. You see, I wasn't bothering with any of them. I just read off my own.

Q. Well, didn't someone speak to Mr. Sandford as to what [474] the effect would be if you didn't sign the contract?

Mr. Mann: I object to that. "Didn't someone speak to Mr. Sandford?"

The Witness: He said that before. He said, that he would not protect our jobs and that we would not get that 5% if we didn't sign.

Q. (By Mr. Sklar) Who said that? A. Mr. Sandford.

Mr. Sklar: That is all. You may inquire.

Cross Examination:

Q. (By Mr. Mann) Did you sign that paper, Miss Tesora? A. Yes.

Q. What day? A. The day we went in, September 20th.

Q. I am now talking about you personally. Did anybody force you to sign the paper? A. No.

Q. Did anybody threaten that anything would happen if you didn't sign the paper? A. That my job wasn't protected.

Q. Who said that? A. Mr. Sandford.

Q. In other words, that you would not get the 5% increase? A. Yes.

Q. You knew that paper—you knew what that paper was, [475] didn't you? A. Yes.

Q. It was a contract? A. Yes.

Q. You signed it? A. Yes.

Q. Mr. Sandford signed it? A. Yes.

Q. On behalf of the company? A. Yes.

Q. Was there any other signatures on it? A. Shop committee's.

1126

Q. Do you know the names of those people? A. Bertha Rossman, Jenny Marolla, Louis Moscola, Bill McCann and some girl, I don't know—she is a new girl—I don't know her name. I know only her first name; her name is Anna.

Trial Examiner Korey: Anna Dunn?

The Witness: No, it is not Anna Dunn, one of the new help.

Q. (By Mr. Mann) Did you read that paper, Board's Exhibit 10 for identification, carefully, before you signed it?

1127

Trial Examiner Korey: He means this contract—this paper here (indicating).

[476] The Witness: Yes.

Q. (By Mr. Mann) You read that before you signed it? A. Certainly.

Q. You read English well? A. Yes.

Q. You understood everything that was in there? A. Yes, of course I did.

Q. You signed it voluntarily. A. Yes, I did.

1128

Q. Nobody forced you to sign it? A. No.

Q. That you signed after you were out on strike from August 2nd to September 20, is that right? A. Say that question.

Q. I say, you signed that paper after you were out on strike from August 2nd to September 20th? A. Yes, when I went back.

Q. And you went back on September 20th? A. Yes.

Q. And you went out on strike on August 2nd, right? A. 112
Yes.

Q. And during that period you didn't work and you didn't earn any money; is that right? A. That is right.

Q. You didn't earn a single penny from August 2nd to [477] September 20th? A. Yes.

Q. How old are you, Miss Tesora, if you don't object? A. 25.

Q. Are you married? A. No.

Q. Do you support anybody in your own home? A. No, sir.

Q. You support yourself? A. Yes, sir.

Q. How much were you making in the National Licorice 113
Company on the day of the strike? A. I knew that was going to be brought up. How much was I making?

Q. Yes. A. I am a piece-worker.

Q. Average. A. If I work all week, I average $23 or $24—sometimes $19, according to the work.

Q. What would you say—would you say the minimum amount is $19? A. The lowest is about $19, yes.

Q. The highest is about what? A. $23 or $24.

Trial Examiner Korey: Was that the sum prior to [478] August 2nd?

Mr. Mann: We are now talking prior to August 113
2nd.

Trial Examiner Korey: I didn't know.

Q. (By Mr. Mann) Before August 2nd, before you went out on strike, would you say that $20 a week was a fair average? A. Yes.

Q. So that if you didn't work from August 2rd to August
132 20th—September 20th, you tell us now how many weeks that is. A. It is going on seven weeks.

Q. So you lost $140 in wages, about; is that right? A. Yes.

Q. And because you found on or about September 20th that most of the people had gone back to work, you decided then in a few days to go back to work?

Mr. Sklar: Objected to.

Q. (By Mr. Mann) Why did you go back to work on September 20th? A. I had no money and I had to go back.

133 Q. You had to go back to work because you had not earned anything for seven weeks? A. It wasn't the earning power.

Q. Well, you had no money. A. I had no money, and I had to go back to work.

[479] Q. And nobody forced you to go back to work? A. No, sir, no one.

Q. And you were glad to be able to go back to work, weren't you? A. No, I was—I was, yes.

Mr. Sklar: Objected to.

Trial Examiner Korey: We will allow it.

134 Q. (By Mr. Mann) Now, when this complaint says that workers were forced to sign this contract, you don't say that that is true, as it applies to you, do you?

Mr. Sklar: That is objected to, Mr. Examiner.

Mr. Mann: That is their allegation. They are putting her on here to prove that she was coerced. That is one of the biggest issues in the case, and I am going to call 130 people to prove that they were not coerced.

Mr. Graham: I didn't attempt to prove by this witness that she was coerced.

Mr. Mann: I think you did.

Trial Examiner Korey: We will allow it.

Mr. Mann: What is that?

Trial Examiner Korey: We will allow it.

Q. (By Mr. Mann) When this complaint says that you were forced to sign that contract or that workers were forced to sign that contract, that is not true, as far as you are concerned?

[480] Trial Examiner Korey: Off the record.

(There was discussion off the record.)

Trial Examiner Korey: Back on the record. Proceed.

Mr. Mann: "—has by means of threat and intimidation, coerced and attempted to coerce its employees in its individual contract." That is the charge.

Mr. Sklar: I think it refers to the charge on July 29th, when Mr. Sanford said he would not sign with the union—

Mr. Mann: When I asked you to give me a bill of particulars as to what you mean, you didn't give it to me, and now you come here and say it means something else. Now, at this point I ask for a ruling.

Trial Examiner Korey: Just a momefit. I am permitting you to have her answer the question.

Mr. Mann: All right.

Q. (By Mr. Mann) Miss Tesoro, the amended charge
1138 says that the National Licorice Company has by means of threats and intimidations, coerced, and attempted to coerce its employees into signing individual contracts. In the first place, do you understand what those words mean, that I just read? A. No.

Q. Well, coerce means to force.

Mr. Sklar: I object to counsel—

Mr. Mann: Do you want to explain?

[481] Mr. Sklar: No, you ask her the question and answer.

1139 Mr. Mann: She says she does not know what it means. Isn't she entitled to an explanation? You explain to her what threats means, or intimidation means, or coercion means.

Mr. Sklar: I am not cross-examining the witness.

Q. (By Mr. Mann) Coercion means to force you to do something. You know what the word "threaten" means, don't you? A. Yes.

Q. "Intimidate" means about the same as threats. Did anybody threaten you or force you to sign this contract? A. No.

1140 Mr. Sklar: Objected to, Mr. Examiner, on the ground that this charge applied to August 2nd and has nothing to do with the contract of September 20th.

Mr. Mann: It talks about individual contracts, and they offered in evidence a contract.

Mr. Sklar: Those contracts referred to are the ones mentioned by Mr. Sanford on July 29th.

Mr. Graham: In order to get the right effect, we are going to let these in. Complaint embodies none of these contracts.

Mr. Mann: May I ask on the record whether they want to go into this question of contracts under their amended charge. If not, let's forget about it.

[482] Trial Examiner Korey: I have ruled you can ask the question. Please continue.

Q. (By Mr. Mann) Were you, Miss Tesoro, forced or threatened to sign this contract which you say you signed on September 20th, a copy of which has been offered as Board's exhibit 10 for identification? A. No.

Mr. Mann: That is all.

Redirect Examination:

Q. (By Mr. Graham) You stated, I believe, a few moments ago, that you were told by Mr. Sanford that if you did not sign the contract you would not get the 5 per cent increase in wages and you would not get protection in your job? A. Yes.

Q. Did you understand by that that there were two different things there, first, the 5 per cent increase which you would not get, and, secondly, the fact that you would not be sure of having any job at all? A. Yes, I understand that.

Q. And, secondly, you stated on your cross examination that you were glad to return to work. By that, do you mean that because you had been out on strike for so long, and you had become hungry and your resistance was pretty well worn down—for that reason the relief of being able to go back

to work and have an income again made you glad, or, [483]
144 were you glad that the strike had not been fully successful?

Mr. Mann: I object to whether she was glad or sorry.

Trial Examiner Korey: We will strike that out.

Mr. Mann: I will concede that she wasn't glad that they didn't win the strike. I will concede, if it is satisfactory, that these girls will testify the same as she did.

Trial Examiner Korey: I will appreciate it if counsel did that, because in that way we can perhaps
145 stop 140 witnesses.

Mr. Mann: Well, you may, if I get a concession.

Mr. Graham: I would like to ask just one more question.

Q. (By Mr. Graham) Is it your present wish to be represented by Local 405? A. Yes.

Q. It is? A. Yes.

Mr. Graham: That is all.

Recross Examination:

146 Q. (By Mr. Mann) By that statement you mean that you are now a member of the union, local 405, is that right? A. Yes.

Q. Did you read your contract? A. Yes.

Q. Your contract says you have a right to be a member of the union? [484] A. Yes.

Q. How much have you been earning in the National Licorice Plant from September 20th to the present day, on an average, Miss Tesoro?

Trial Examiner Korey: Average a week?

Mr. Mann: In the last four weeks. 1147

The Witness: The first week I went back I made $11.80; that is for two and a half days.

Trial Examiner Korey: Have you worked any one week steadily for a week?

The Witness: Yes.

Mr. Mann: A whole week?

The Witness: Yes.

Trial Examiner Korey: What did you average that week?

The Witness: The following week I worked six days. 1148

Trial Examiner Korey: What did you average?

The Witness: $26.50; that is besides the 5 per cent. With the 5 per cent, that would be $27.80.

Q. (By Mr. Mann) What week was that for? A. The second week I went back.

Trial Examiner Korey: That was about October —the first week in October?

Mr. Mann: She went back on the 20th.

Trial Examiner Korey: Last few days in September and October. 1149

[485] The Witness: I went back on Monday afternoon; on Wednesday night, the week after. So that was the—

Mr. Mann: 20th, 21st and 22nd, you mean?

The Witness: 23rd.

Trial Examiner Korey: 22nd to 29th, I think, you made that average?

The Witness: Yes.

1150 Trial Examiner Korey: Now, had you worked a full week prior to August 2nd? If so, what would you average on that week?

The Witness: A whole week—you mean five days?

Trial Examiner Korey: You work six days a week?

The Witness: No, the first week I went back I worked six days.

Trial Examiner Korey: The first week you went back you worked six days?

The Witness: Yes.

1151 Trial Examiner Korey: Does that include Saturdays?

The Witness: Yes.

Trial Examiner Korey: Did you ever work six days prior to August 2nd?

Mr. Mann: Before the strike.

The Witness: No.

Trial Examiner Korey: What did you average for five days—the full five days?

[486] The Witness: Five days, I would average $22 or $23 a week.

Mr. Mann: Before the strike?

The Witness: Yes, before the strike.

1152 Mr. Mann: And after the strike—how much did you make after the strike?

The Witness: After the strike, I am telling you, we worked six days for two weeks. The first week was $27.80, and the second week was $25.80.

Mr. Graham: Is this a pretty busy season for the company?

The Witness: Yes.

Mr. Graham: Are you one of the fastest workers there in the plant? 1153

The Witness: In my department, yes.

Mr. Graham: Do any of the girls earn anything like as much as you do, the ones that are on your floor?

The Witness: No.

Mr. Mann: Are you making a little more now, taking the five day week, than you did before the strike?

The Witness: No.

Mr. Mann: You are making the same?

The Witness: The same. 1154

Mr. Graham: That is all.

Mr. Mann: That is all.

[487] Trial Examiner Korey: Thank you, Miss Tesoro.

The Witness: Thank you.

(Witness excused.)

Mr. Mann: It is now stipulated that exhibit No. 10, which was previously offered for identification, is now offered by consent as Board's exhibit 10 in evidence, and that that contract is identical with the contract that the last witness, Carmella Tesoro, testified that she signed. 1155

(Thereupon the document above referred to, previously marked as Board's Exhibit 10 for identification, was marked Board's Exhibit No. 10, in evidence.)

Mr. Graham: It is further stipulated that the other witnesses who have been called here, Anna Dunn, Ann Trunitz, Louis Mascola, and—

Mr. Mann: In that stipulation I would like to have it appear that the dates on these other contracts must be the same date as September 20th.

Trial Examiner Korey: That is right.

Mr. Mann: And as Tesora testified that she was one of the last to come back.

Mr. Graham: Continuing, it is stipulated that the witnesses whom I have mentioned and who have been brought to this hearing under subpoena, would, if placed upon the stand, testify as did the witness Carmella Tesoro, as to [488] the signing of the contract in question.

Mr. Mann: And if the other three witnesses were called, they would have given answers to the same effect that the Tesoro girl gave.

LOUIS MASCOLA, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Graham) Reference has been made during the hearing and while you were present at the hearing to a certain paragraph on a paper, which paragraph has been identified by one of the witnesses, reading as follows:

"This Committee supersedes any other group or representative of the employees."

I would like to ask you whether that was the paragraph which you had just read when you ran up to Carmella Tesoro and said you wanted your name removed from the paper? A. Well, at that time she had the paper in her hand. I was quite a distance away, and there was a washwoman there at the time, and she told me, "Are you sure you read it?" So I just happened to think of it. I said, "No, I didn't read it carefully downstairs."

I took the paper out of Carmella's hands and I read that second paragraph, and the second paragraph said that [489] if we sign that we were going to be a bargaining committee to supersede the outside union, so when I saw that paragraph I was the first one scratching my name off, and I think the rest of the committee followed after I took my name off.

Downstairs I didn't see—I didn't bother staying in the room.

Mr. Graham: That is all.

Cross Examination:

Q. (By Mr. Mann) That paper, which is not here and which nobody has produced, had those words on it, namely, that that committee which was referred to in that paper was superseding any other committee that you had previously appointed, is that right? A. Yes.

Q. As your agent for bargaining purposes?

Mr. Graham: I am not sure; I understand that the other committee—

Mr. Mann: Well, let's get it.

Trial Examiner Korey: We all want to get the information.

Mr. Graham: About what other committee in the
1162 union did that clause refer?

The Witness: To the outside union.

Q. (By Mr. Mann) You mean, the Bakery & Confectionery Workers Union? [490] A. Yes.

Q. In other words, you had, first, by signing these application cards, Board's exhibit 8, you and others had around July 16th or 17th—around that time—signed these applications, these yellow slips? A. Yes, sir.

Mr. Sklar: Why should he say 16—

1163 Q. (By Mr. Mann) You signed yours on the 10th of July, according to the papers here; others had signed later; is that right? A. Yes.

Q. And about the 16th or 17th, when these papers—when this paper was handed to you, you signed it? A. That is right.

Q. And after you signed it you recall, or somebody recalled to you, that it contained a statement that by signing that paper you were designating a new committee instead of the union, which you had appointed, is that right? A. That is true.

Q. And at that time, you did not want it that way; is that right? A. Yes.

1164 Q. So then you scratched out your name? A. And went downstairs.

Q. And went downstairs: that was on what date, July 19th? [491] A. Yes, sir.

Trial Examiner Korey: With respect to the other testimony, the same stipulation applies to this witness as to the other witnesses?

Mr. Graham: With respect to the testimony of Miss Tesoro, yes.

Mr. Mann: Just one question.

Q. (By Mr. Mann) That committee, whose names were on there, did nothing? A. No, they really operated—the committee were—we were to get the signatures of people, and we didn't get them.

Q. You had not functioned at all? A. No.

Redirect Examination:

Q. (By Mr. Sklar) You attended a conference in Mr. Sanford's office, did you not? A. I did, surely.

Q. And you were part of that committee which attended the conference in Mr. Sanford's office? A. Yes.

Mr. Sklar: That is all.

(Witness excused.)

Mr. Graham: I now offer in evidence as exhibit—Board's exhibit 11, a duplicate copy of the telegram which [492] has been heretofore entered in evidence as respondent's exhibit 1.

This duplicate was delivered to the recipient of the telegram at his request here today; this duplicate was delivered to William A. Galvin, President of the Union, at his request.

Stamped on the back of the telegram is "July 15, 1937." On the face of the telegram is stamped "1937 —July 14, P. M., 9/13," the date on which the telegram was sent.

Trial Examiner Korey: Any objection?

Mr. Mann: I object to that on the ground that the original which we have given in evidence is the one that should be taken. That is the one we got.

Mr. Sklar: Do we have to get the Postal officials to identify the time when this telegram was actually sent?

Trial Examiner Korey: Mr. Mann, do you question the authenticity of this being a duplicate copy sent by the Postal Telegraph?

Mr. Mann: I don't know what it is, Mr. Korey. I don't know enough about it to make any concession. All I know is, this is what we got.

Trial Examiner Korey: Mr. Galvin, take the stand, please.

WILLIAM A. GALVIN a witness recalled by and on behalf of the National Labor [493] Relations Board, having been previously duly sworn, was examined and testified further as follows:

Examination by the Chair:

Q. (By Trial Examiner Korey) A copy of a telegram, dated July 14, of the Postal Telegraph, presumably sent by the Bakery & Confectionery Workers International Union of America, Local 405, signed, "William A. Galvin, President of the Bakery & Confectionery Workers International Union of America," Brooklyn, is being presented here to be marked into evidence. Did you send that telegram? A. Yes.

Direct Examination:

Q. (By Mr. Graham) Will you tell us please when and if you received that copy and how you happened to receive it? A. On the night of July 14th, 1937, upon being informed by Brother Picariello, at an executive board meeting, that the majority of the employees of the National Licorice Company had already designated us as their collective bargaining agency, I went to a telephone and called Postal Telegraph and gave them a message that I addressed—dictated to them over the phone to the National Licorice Company.

Upon the completion of the message, it was called to my attention that if I asked the telegraph company for a copy of this message, they would send it, or mail it to me.

I remember the operator being very nasty about it. [494] He said I should have told him beforehand. The next morning I received this through the mail, which is stamped by the Postal Telegraph.

In the corner it says, "Recorder's sign: W. V."; "Central Office telephone number of the sender; Chelsea 2-8058"; and, "Check: 70-1E. X. N. L."; and where it says, "Time filed and special information," there is a stamp of the company which says, "Duplicate of telegram telephoned, 1937, July 14th, T. P. M. 9:13."

Q. That telephone number, Chelsea 2-8058, where is that, Mr. Galvin? A. One of the telephone numbers of our union, also on the note for the record that 9:13 is Eastern Standard Time. We were probably calling this after 10:00 o'clock Daylight Saving Time. It is a duplicate of the one offered in evidence, except that the previous one offered by the company seems to say, by some inadvertence, "9:13 A. M., July 14th."

Trial Examiner Korey: Did I hear you say you
1174 received this through the mail?

A. Yes, I received that through the mail. Here, we have a mail stamp (indicating). On the back of it it says, "Bakery & Confectionery Workers International Union of America, Local 405, 245 West 14th Street, New York City."

We have some use, when organizing, to show receipts. "July 15th, 1937, at 10:00 A. M." But I would like also to [495] call attention in respondent's exhibit 1, that the top line shows a "9:13 A. M." as the sending time.

That telegram at the bottom says 7:33 a. m, as the re-
1175 ceiving time of the telegram. It was received at the Brooklyn office before it was sent from the New York office, according to that telegram—a mistake by the telegraph company.

Trial Examiner Korey: We will take this into the record and mark it Board's exhibit 11.

(Thereupon the document above referred to was marked as Board's Exhibit No. 11, in evidence.)

Mr. Graham: I would like to state for the record at
1176 this time that I have just handed to counsel for the company the written request, to which reference was made earlier in this hearing, for a witness who would be competent to testify as to the value of the products shipped from countries and states other than the State of New York to the New York plant of the National Licorice Company, and products shipped by that company from that plant to states and countries—

Mr. Mann: In dollars?

Mr. Graham: The approximate figure in dollars. That is the case for the Government. 117

Trial Examiner Korey: The Government rests, then, Mr. Graham?

Mr. Sklar: Except for the stipulation.

[496] Trial Examiner Korey: It is held open, just for that purpose.

Is there anything further this evening, before we adjourn?

Mr. Graham: Nothing further.

Mr. Mann: I have nothing further.

Trial Examiner Korey: You may be excused, then, Mr. Galvin. 117

Mr. Galvin: Thank you.

(Witness excused.)

Trial Examiner Korey: We will adjourn at this time until 9:30 tomorrow morning.

(Whereupon, at 5:30 o'clock p. m., October 15, 1937, the hearing was adjourned to 9:30 o'clock a. m., October 16, 1937.)

117

[497] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

SECOND REGION

1180 Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY.

1181

Room 419, Old Post Office Building,
New York, New York
Saturday, October 16, 1937.

The hearing was resumed, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

H. R. KOREY, Esq.,
Trial Examiner.

1182 APPEARANCES:

CHARLES E. GRAHAM, Esq. (233 Broadway, New York, New York) on behalf of the National Labor Relations Board.

KOTZEN, MANN & SIEGEL, Esqs. (51 Chambers St., New York, New York) attorneys for Respondent, by
ABRAHAM MANN, Esq., and
JOSEPH YASPAN, Esq., *of Counsel.*

KALMAN SKLAR, Esq. (521 5th Ave., New York, N. Y.) appearing for Bakery & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity. 1183

WILLIAM E. GALVIN (245 W. 14th St., New York, N. Y.) President of Bakery & Confectionery Workers International Union of America, Local 405.

[498] PROCEEDINGS

Trial Examiner Korey: The hearing will come to order. 1184

Mr. Mann: The Board last night rested and after leaving this office I went back in my office to review the evidence that had been offered here by the Board since Wednesday afternoon, October 13th.

In going over the testimony that the witnesses offered on behalf of the Board, I want to say right now that I find that there is nothing in my opinion that has been submitted which proved any of the allegations of the complaint.

I am prepared to argue that at length, but before doing so, I would respectfully request the Examiner to ask Mr. Graham to make a statement on the record, indicating what complaint he has proved to substantiate the allegations of this complaint, and then I think we can save a lot of time because you then, I believe, will be able to make some rulings. 1185

Trial Examiner Korey: Are you making this in

an effort to establish some facts with regard to a
1186 motion to dismiss?

Mr. Mann: Yes, I am making this, to be very frank with you, for the purpose of expediting this hearing.

I am convinced in my own mind, Mr. Examiner, that there is nothing here that I have to meet. That is my own [499] opinion, and an honest and sincere one.

If Mr. Graham can show me—

Trial Examiner Korey: I believe the burden is on you if you are going to make the motion, to show where the Board has failed to establish a case.

187 Mr. Mann: I am perfectly willing to do it that way.

I will speak first, instead of Mr. Graham, but I would like to know now what relief they are seeking here. I cannot find that from the complaint.

If they think they are entitled, then what—

Trial Examiner Korey: The Board has rested, and if you have motions to make, make them in the proper manner.

Mr. Mann: Then, I move to dismiss the complaint on the technical grounds that I urged at the outset of the hearing, namely, that the original charge is not
188 attached to the complaint, which I say is a violation—

Trial Examiner Korey: Take them one by one.

Mr. Mann: Which I say is a violation of Article 2, Section 5, of the rules and regulations of the National Labor Relations Board, Series 1, as amended April 27, 1936.

Trial Examiner Korey: In view of the fact that

the amended charge has taken the place of the original charge, I will deny that motion.

Mr. Mann: All right, I will take an exception.

Trial Examiner Korey: Granted.

[500] Mr. Mann: Of course, I did make an application for a bill of particulars at the outset of this hearing.

Trial Examiner Korey: That is right.

Mr. Mann: And you reserved decision on part of the relief that I requested in my motion after the Board had permitted what they called a compliance with that demand.

Clearly, it was not a compliance because they decided for themselves what I should get and what I should not get, and they gave me what I thought I should get, and refused to give me what they thought I should not get.

Then, I made the motion and of course I was compelled to go on with the hearings without getting what I was asking for and you reserved decision.

I imagine the matter has now become more or less academic, because if I do not get a bill of particulars, prior to the commencement of proof, it does not do any good after the Board has rested.

In that respect, I think I have been prejudiced and I want to have that noted on the record so that I waive no rights on behalf of my client. I believe the ruling should have been made at the outset and not now.

However, if you are ready to make a ruling now, we can have it—

Trial Examiner Korey: I am ready to make a ruling if you thought you were going to be prejudiced then you should [501] have said so at the time.

Anyhow, at this time I will rule that with respect to your motion for a direction of a bill of particulars as to the allegations in the charge, I will deny that motion.

Mr. Mann: I take an exception.

Trial Examiner Korey: Yes. If I recall, I denied your application for demands of bill of particulars with respect to paragraph 8 and 9 of the adjusted complaint and I reserve decision as to the latter part of paragraph 11, is that correct?

Mr. Mann: That is right, wherein I requested the names of the employes.

Trial Examiner Korey: I will deny the motion.

Mr. Mann: I except.

Trial Examiner Korey: You also made a motion on which decision was reserved with respect to dismissal of the complaint because it does not contain a copy of your original charges.

I believe that is what you are doing now.

Mr. Mann: That is right.

Trial Examiner Korey: I deny that motion.

Mr. Mann: I except.

Trial Examiner Korey: Was there another motion with respect to the same thing when you said that there was no charge, or amended charge? Was that a part of that motion?

[502] Mr. Mann: That was part of that motion.

Trial Examiner Korey: All right.

Mr. Mann: Now, Mr. Examiner, I might say that

I noticed you have been doing what I have been doing, taking notes, copious notes of the proceedings as they have developed, and I think in that respect we will have no difficulty in comparing our notes for the purpose of deciding whether or not the complaint has been proved in any particular.

First of all, I want to direct this motion to dismiss the complaint on paragraphs 4 and 5 of the complaint which purport to charge the respondent with a refusal and failure to bargain collectively with this Union, who it is claimed was the duly designated representatives of the workers, and which failure it is claimed is a violation of Section 8, Sub-division 5 of the National Labor Relations Act.

Now, they devote in their complaint—and I am going to take this complaint as the basis of my motion because I know of no other thing in any hearing at any time or at any place which supersedes or goes outside of the complaint that either stands or falls on what is in here, they either stand or fall on what they have submitted by all our testimony and by exhibits to prove what is in here, namely, in the complaint.

Now, let us see what they have proved to establish [503] paragraphs 4 and 5 of the complaint by which they purport to charge the refusal to bargain collectively with the representatives of the employes and purport to charge a violation of Section 8, Sub-division 5.

You will remember, Mr. Examiner, that the first thing that was offered in evidence was this telegram.

Now, there is a great deal to be said about that.
98 I say that somebody has committed perjury here, and I say that advisedly, because you will remember this witness here yesterday, this young man, Landriscina —he was the one who was supposed to have gotten—

Trial Examiner Korey: Do you want all of this on the record?

(There was discussion off the record.)

Mr Mann: Landriscina claimed that he had gotten the applications on various dates.

99 You will remember he was supposed to have 14 on July 10, 27 on July 12, and 15 on July 13; that would have given him 56.

The dispute comes in on those that he claims he got on the 14th. He said there were 43 that he got that morning.

Now, that telegram that we offered in evidence indicates that that telegram was sent out right in the morning to Mr. Galvin, but what's more important is that Landriscina testified that he made a telephone call at eight o'clock in [504] the morning to Mr. Galvin, advising him that he had a majority.

00 He admitted that he did not have a majority at that time, but his explanation was that he felt sure he was going to get them that evening because the people had promised to come back and sign up that evening.

Now, I say to you, Mr. Examiner, that Landriscina, when he said he telephoned to Mr. Galvin that morning, he is telling the truth, or he is committing perjury.

I have my own opinion of that testimony of his, which I do not think it is necessary for me to put on the record. My opinions do not count here. It is yours that count.

But, I will say this, that if he made that telephone call that morning, as he said he did, then I say that Galvin sent that telegram that morning at a time when he did not have a majority of the employes.

Now, that is one of the things that I think is important here, and we now proceed, let us pass that for a moment, and let us see what happens.

Do not forget that they say here that they had a majority of the workers and when I say they say that, they say it here on the witness stand, but they did not say that in the telegram.

Mr. Galvin is nobody's fool, he is not only President of the Union, but he is a man who is a law student and says [505] he is going to be admitted to the bar soon.

Do you think that a President of the Union, who is in addition to that a student of the law, would send that kind of a telegram and leave out the word "majority" of employes, if he had a majority at that time?

Doesn't he know and hasn't he admitted here that the thing that is more important, that is, the most important word in the whole thing, when it comes to the sort of collective bargaining is the word "majority"?

Because, if you had one less than a majority you have no right at all. If you have one more than a ma-

jority, if you have 51% of anything, then your rights
204 are there as to collective bargaining.

Yet, we had this most important issue, as to whether or not they represented a majority on July 14th with a telegram in evidence and the word left out.

I say they did not represent a majority on July 14th. And I say that when Galvin, a law student, a president of the Union, sends that kind of a fake telegram, fake because it attempts to bamboozle the receiver, is an attempt to confusion, the receiver is not a lawyer. He is a law student, he is a president of the Union. Why wasn't he honest?

205 If he had a majority, why did he not say so?

I say to you, Mr. Examiner, that he never had a majority the day he sent that telegram, and he knows it.

[506] Even the complaint proves that he did not have a majority.

I am going to ask you to look at that. I think that is very important. Look what they say in paragraph 4 of that complaint:

"On or about July 28, 1937, a majority of the employes of Respondent in said unit designated a
206 labor organization known as the Bakery & Confectionery Workers International Union of America, Local Union 405, as their representative for the purpose of collective bargaining with the Respondent."

When does the complaint say? Does it say of July 14th? Does it say July 15th? No, the sworn complaint says July 28, the majority of the employes of respondent in said unit designated, on that day, the Union as their representative. That is the language.

So, if you find they did not bargain on July 19th, if we did not bargain, the Respondent, I mean, with the Union on July 19th, that is of no effect here. We were not supposed to bargain with them on July 19th, for two reasons: 1207

First, from the telegram where they failed to state that they represented a majority, and now before you is the complaint where it is admitted they had no majority prior to July 28.

[507] Now, we come to the next important feature of this case, as far as paragraphs 4 and 5 of the complaint are concerned. 1208

That is, what did we do on July 29th? That date becomes important, Mr. Examiner, because the complaint says on July 28th the majority of the workers designated this labor organization as their bargaining agency.

That is why what we did on July 29th with them becomes important.

What did we do?

You heard the evidence on that. The evidence on that was as follows:

Although my client was 100 per cent. satisfied that this Union did not represent the majority of the workers, prior to July 28th, when he received the telephone call from the National Labor Board of the Second Region to see Mrs. Herrick, or some one of her representatives, he, like a good, law-abiding citizen came; he responded. 1209

He did not say to Mrs. Herrick, or Mr. McCann over the telephone, "I am not going to come over there,

because I do not believe that Union represents a
1210 majority."

But he did come there.

What did he do when he came?

He conferred with Mr. McCann, who, I assume, is a duly selected representative of the Labor Board. There was a [508] conference in there, and, when Mr. McCann told Mr. Sandford that I think this Union represents a majority, although, remember, Mr. Examiner, that even at that time no cards were taken out, nothing was shown, no real proof was submitted, but Mr. Sandford took Mr. McCann's word.

1211 He would not take Galvin's word, he would not take Anderson's word, he would not take Sklar's word for it, or any of the Union people's word, but we came to an official office and there he spoke to a man in authority. He took his word, even though that man in authority presented no real proof to him.

He took his word for it. When McCann said to Sanford, "I think they represent a majority, go out and bargain with them"—what did they do? They did bargain on July 29th, 1937, at the office of the National Licorice Company.

1212 And, now, I am going to come to that and show you how they bargained, and when this complaint says in paragraph 5 thereof, that they refused to bargain collectively and failed to bargain collectively with the Union, that is not true, and this evidence that was submitted here by Mr. Galvin and Mr. Anderson shows that is not true.

Now, you remember what Galvin says here on that question? And I had him on cross-examination for

probably over an hour and the same with Anderson on that one thing, as to what they did this in that place for two and a half [509] hours, or two hours that afternoon of July 29th, 1937. By "that place" I mean the National Licorice Company office. 1213

Before I start to review that evidence which you are going to determine—the effect of which you are going to determine, I say let us understand for a minute what the law means when it talks of "collective bargaining," and that is some word that has been used so frequently since the National Labor Law has been declared constitutional, that maybe some of us sometimes lose sight of it. 1214

I think that some of these boys in the Union do not understand what it means.

While Mr. Anderson is looking at me, I think he does not understand what it means.

Collective bargaining, as I take it, means simply this, it does not mean that you have to reach an agreement with anybody. It does not mean that you have to accept the other fellow's offer. It does not mean that the other fellow has to accept your counter offer.

It simply means that you have to honestly sit down some place, somewhere, while everybody is sober, and talk across the table about something, not necessarily to arrive at an agreement whether oral or in writing, but to bargain honestly. 1215

I want this, says "A", I will give you this says "B". Says "A", "No, I won't take what you give me. I will, [510] however, offer you this." That is bargaining.

The definition is—that is, the definition of bargaining is simply, negotiating, discussing, honestly talking to each other about something. That is all that collective bargaining means.

And, therefore, before we start reviewing as to what really happened here on July 29th, and I am to go now through the testimony, you have not heard mine at all. If I am going to submit any, I do not know.

But, take Anderson's testimony and take Galvin's testimony, and I submit to you, Mr. Examiner, that I think that that testimony proves conclusively that we bargained collectively with them on July 29th from 2 to 4 PM at our office and the terms of their demands, which is Respondent's Exhibit 2.

Do you remember, Mr. Examiner, that I went over every one of those 12 paragraphs with both of those gentlemen, Mr. Galvin and Mr. Anderson, on cross-examination, and asked them specifically, well, what was said about that, Mr. Galvin? What was said about this, Mr. Anderson, did you say, you remember Galvin had notes on his copy which he did not want to show you, he does not want to show it to me.

And he does not want to offer it in evidence. He calls it his own private notes.

[511] Why, if he is there, this President of this Union, why does he not submit that that may prove conclusively that they were bargaining.

But, no, that they would not show you. That they do not like to show you. Maybe, they are going to get licked if they show you that. So that they keep it. That they call fair. I call that grossly unfair. That is not on the level.

Colloquy.

Now, who started this bargaining?

It is true it was not concluded on July 29. They had not arrived at anything very definite. The Union was not satisfied with what Mr. Sandford was offering them, and Sandford was certainly very dissatisfied with what the Union was asking from him.

So what happened?

Galvin and Anderson both have told you on the witness stand that we left in the hope that we would meet again. Bear that in mind, in the hope that we would meet again, Mr. Examiner.

Did they ever meet again?

The answer is no.

Whose fault is it that they did not meet again? The evidence shows that it is the fault of the Bakery & Confectionery Local Union 405, and nobody else's fault.

What is my authority to prove that? Different [512] exhibits in evidence.

What exhibits are they? Those letters.

What happened after July 29th around four o'clock when that afternoon Galvin and Anderson left the office of the National Licorice Company with the statement, "we will meet again", or "we hope to meet again."

Well, we all know now what happened.

July 29th was on a Thursday. The last time, therefore, that Sandford, Healy, Smylie, all those people of the National Licorice Company, saw Mr. Galvin and Mr. Anderson was at four o'clock of July 29th, Thursday.

Friday they did not show up, Friday the 30th. Saturday, July 31st, they made no appearance. Sunday, August 1, they were not there, and now we come to Monday, August 2nd.

We know what happened on Monday, August 2, there was a sit-down strike.

The stupidity of calling that a lock-out is the limit in this case.

Here are workers, Andretta told you that yesterday, they took possession. He says, at the plant, they were tired of waiting for an answer and they determined to sit down in the back of the shipping room and they would not go away.

I do not care whether a man came there and put a padlock on. They were the workers.

[513] If we go on with this case I am going to have the Captain here, Captain Richter, of the police, who is going to tell you everything that happened there; who had to call the police, the workers?

No, the National Licorice Company. Sure. Why? Because the National Licorice Company was afraid that these 130 workers were going to do something there.

Then, they called the police.

Don't you think the workers would have called the police if the National Licorice Company had locked them in, and what nonsense is that?

What boss ever locked in the employes? For what?

He wants employes to work. He is paying them to work. They are there to work. He is not going to pay them to lock them in, not unless they do something first.

Maybe, he was afraid they were going to damage his property, but I do not think they were ever locked in for a minute. 1225

But, that is just in passing as to what happened there at 12:30 on August 2.

Going back to how this occurrence affects the proof as to failure to bargain, let me continue on that.

Anderson is nobody's fool, either. He is a pretty smart fellow, if I do say it to him in front of his face, and he writes a very carefully worded letter on August 2nd, [514] 1937, and he sends it by registered mail, Board's Exhibit No. 5.

Let me read that letter and show you that even Anderson was not on the level here with us when he wrote that letter. 1226

You will notice, if you read that letter, Mr. Examiner, although this is written on the evening of August 2, and he did not deny this, he admitted it, that he wrote it late in the evening, at that time there was not only the sit-down strike which had already ended, it only lasted from 2 to 4, but then there was the other strike that was really in effect because they tell you on that night of August 2nd, at the end of the day, they were already in front of the place with the picket signs. 1227

Picket signs ordered by whom? They tell you then, by him, this Union, they paid for the picket signs, August 2, those picket signs were on already at night.

But, look at this letter of Anderson's on August 2. Does he refer to a strike? Does he refer to a sit-down strike? Does he refer to any kind of a strike,

although it is already on and he has paid or ordered
228 the picket signs?

The answer is no.

He talked about the notes, the stenographer's notes that he said he did not get from Mr. Sanford.

[515] And, you will remember, I am sure, that what that is about was, when they came in on July 28th, Sanford called in a girl to take down the notes. She was not a very competent girl, and they all sat there, six or seven people talking. She is not as capable, for example, as this lady here, or as a public stenographer. She is just a girl working in an office
229 and surely those notes are not accurate and Sanford is gentleman enough and businessman enough that when something goes out of his office, it has to be accurate, otherwise, it won't go out.

That is why they never got those notes. They were not 100 per cent. accurate.

Let me read the whole letter.

"Confirming our telephonic conversation of to-day"—that is August 2nd at 10:00 o'clock; Mr. Anderson tells you that telephonic conversation took place two and a half hours before the sit-down strike. "We
230 understand that the minutes"—and do not forget, please, Mr. Examiner, that this is written August 2nd at seven or eight o'clock at night, after he knows all about what has happened since 12 o'clock in the morning.

(There was discussion off the record.)

Mr. Mann: This is the letter:

"Confirming our telephonic conversation of today 1231
with you and Mr. Sanford, we understand that the minutes taken [516] by your stenographer at our meeting at your office on Thursday, July 29, will not be available due to the fact that this stenographer was unable to take the notes with any degree of inaccuracy, and also because on Friday, July 30, she left on her vacation, and, therefore, the notes as she took them, were not transcribed."

So far so good.

1232

"Although it is regrettable that these notes are not available, they should not stand in the way of an immediate conference between us, looking toward an amicable adjustment of the existing controversy."

And you remember I asked him whether controversy is synonymous with strike, and he said no. I should not have used the word controversy there. He should have used the word strike because he knew at eight or nine o'clock at night on August 2nd the strike had been on and it was declared, and the pickets were already there, and not only did he tell you that; this last witness yesterday, Andretta, also told you that. 1233

He had ordered the pickets at six o'clock. Remember that testimony.

I continue the letter;

"We beg to advise you that the Union is now ready and will continue to hold itself in readiness to meet with you at any time and any place you may designate

in order [517] to mediate these issues, and, through collective bargaining, arrive at a mutually satisfactory agreement.

"We trust that you will agree with us that an immediate conference is desirable. Awaiting your advice in the matter, we are, very truly yours."

Now, you are going to read that letter very carefully, Mr. Examiner; I am sure you will, and you are going to see, and I believe you are going to find from the purpose of writing that letter.

But, Mr. Sanford is a smart business man. He was not fooled by that letter. They are not dealing with a baby here, they are dealing with a man at the head of a big organization.

So, what does Sanford do? Sanford knew, on the morning of August 3, when he got that letter, what this was all about now. He knew what that sit-down strike was on August 2 at 12 o'clock. He must have seen the pickets on August 2 at six o'clock in the evening, and he saw them certainly when he came in the morning of August 3, when no one was employed and when Andretta tells you that 100 per cent. of the employes were on the picket line, everybody was out, nobody was inside the morning of August 3.

Now, of course, you know, as a lawyer, and as a business man, how Mr. Anderson—I mean Mr. Sanford must have felt [518] when he came into the place on the morning of August 3 and to add to his misery, he had to read this letter, Board's Exhibit No. 5, in the language of Anderson.

So, what does he do? He sits down that very

minute and you have here Board's Exhibit No. 6, and remember, Mr. Examiner, I am talking to you now only on one feature of this complaint, the failure to bargain collectively. I am proving to you by these exhibits, that we did not fail to bargain collectively.

I now read Board's Exhibit No. 6, the reply of Mr. Sanford to Mr. Anderson's letter of August 2nd, which is Board's Exhibit 5.

"Mr. James Anderson, Vice President, the Biscuit and Cracker Workers Local No. 405, 245 West 14th Street, New York City.

"Dear Sir:

"Since telephone conversation with you Monday morning, August 2, at which time we arranged a conference between your Union and our company for Thursday, August 5, at 10:00 A. M., a sit-down strike occurred in our plant at 12:30 P. M. August 2nd."

Trial Examiner Korey: Mr Mann, I thought perhaps we could save the record if you can, the expressive part of this record, as I told you when you started, we usually have arguments off the record.

[519] If you want it for the record, you have the privilege of that, if you want it.

When you refer to exhibits, why not say off the record, and read them off. There is no use cluttering up the record with a repetition of the exhibits.

Mr. Mann: All right, I will read this one and will not do it any more.

"You will note that the sit-down strike took place
1240 within a few hours after said conversation with you"—

before I read you the second paragraph of the letter, I must talk a word about this.

At 10:00 o'clock, Mr. Examiner, Anderson and Mr. Sanford conferred about meeting again to continue where they had left off on July 29th.

Do not forget this, 10 o'clock that morning, of August 2, that is conceded by Anderson. And at 12:30, three hours—two hours and a half later, a strike was called.

1241 And what did they say to each other on August 2nd at 10:00 A. M.?

Sanford wanted to meet as early as possible—I mean Anderson wanted to meet as early as possible. Sanford said, "I cannot meet you before Thursday, August 5, at 10:30 A. M."

He even fixed the hour because some people were coming here on business from Europe. That is what Anderson said [520] on the witness stand. He gave you the reason. He was telling the truth about that.

Now, that is fair. Business people do that, and Anderson evidently agreed to it. Anderson did not
1242 say, "If you do not meet me in the next five minutes, there is going to be a strike."

He evidently was satisfied with August 5.

And, I tell you, Mr. Examiner, that when Mr. Sanford hung up that telephone on the morning of August 2, at about 10 o'clock, after having this talk with Anderson, he evidently, honestly and sincerely and firmly believed that on August 5, at 10:30 A. M.

he was going to meet these gentlemen again for collective bargaining, to continue where they left off on July 29th, at 4:00 P. M. 124

Now, I will read the second paragraph of that letter, Board's Exhibit No. 6:

"In talking with you over the telephone and in conference with you, Mr. Galvin and other representatives of your Union previously, we were under the impression that the Union would not call any strikes pending negotiations. In view of the fact that we believe the Union called this sit-down strike, we hereby cancel the conference arranged for Thursday, August 5, at 10:30 A. M. and will not set any time for further negotiations until we have had a letter from you, informing us as to whether or not the strike was [521] instigated, ordered or approved by your Union, or any official or officials of the Union. 124

The last line of this letter reads:

"This answers your letter of yesterday's date. Yours sincerely."

That was signed by Mr. Sanford, the President. 124

Now, I ask you, Mr. Examiner, in all fairness, whether this Union was on the level, were honest men with my client when they did not reply to this letter, Board's Exhibit No. 6?

I will say that in view of their failure to reply you are bound to find a question on this issue alleged in

their complaint as a failure on our part to continue to
11246 bargain collectively with them.

They did not even have the decency to answer a letter, let alone to deny that they had called this strike.

They tell you here, the Union did not call it. Do you know why they tell you that, Mr. Examiner? You know why they are trying to avoid all responsibility for the calling of this strike. Of course you do. Anybody knows that now.

The strike was lost. That is why they tell you they did not call it. They do not want to go on record as
11247 having called a strike which was later lost.

But, they are all die-hards, they hate to admit it.

[522] Did you hear them say here yesterday, Galvin, the President; the man who studied law, the fellow who one day hopes to be a lawyer, the strike, he says is still on.

What stupidity!

How absurd, and I asked him—I said, "Why is it on?"

"Because two people are not back there."

11248 Who were the two people? Our friends here who testified yesterday, Andretta, and Mr. Jim Blasi.

So, I said, if these people are not working there in 1947, which is ten years from now, will the strike still be on? Galvin, I think, or was it Andretta, said yes.

Now, is that evidence of responsible people to deal with in a Union? What are we dealing with? Who

are we to deal with this National Labor Relations Act if that is the kind of stuff that is handed to us in the court-room? 124

But, we will—we were still willing to meet them on August 5 at 10:30 A. M., provided they would put down in writing that they did not call the strik . They did not do it.

Therefore, I ask you to infer that they did call the strike, in spite of their testimony here that they did not, because any man who is decent, who is honorable, who has not done a thing, and who is charged with doing it by another man, has the decency and the honesty to at least deny it in a letter. 125

[523] That they did not have the decency and honesty to do, therefore, I say that it should be found here as a fact that the Union called a strike.

And, as a result of that, we had a right, until they called that strike off, between August 2 and August 5, and put on those workers where they belonged, we had a right not to meet any of them on August 5 at 10:30 A. M.

And any finding which is contrary to that, I say is not a finding under the theory and spirit of the National Labor Relations Act.

Therefore, in conclusion on this one point of the charge in this complaint against us that we failed to bargain collectively with this Union in violation of the provisions in Section 8, Sub-division 5, I say to you, Mr. Examiner, that we should come out first on that, and not second, and your findings should indicate that we did bargain collectively, and that any 125

failure to meet on August 5, at 10:30 A. M. was due to their conduct, and not to ours, but we should be exonerated and that that charge should be dismissed.

Now, we come to the next paragraphs of the complaint, paragraphs which allege a violation of Section 8, Sub-division 2.

(There was discussion off the record.)

Mr. Mann: Now, as to paragraph 6, which alleges a [524] violation of Section 8, Sub-division 2 of the Act, I move to dismiss the complaint—this paragraph of the complaint which the Board has attempted to sustain by producing these last witnesses last night, Carmela Tesora and the last, Louis Moscola, and the one before that, Andretta.

Now, unfortunately for the Board, they do not know their case. They do not know their facts. And, after 30 years of experience in courts I know that if you do not know your facts you cannot get anywhere.

And, that has been demonstrated on a theory so conclusively that there cannot be any question about it.

I am now going to direct your attention to paragraph 6 and to the evidence which they have brought here to sustain that paragraph.

Notice they say that on or about July 16th, that date is very important as it is alleged in this complaint.

What happened on July 16th according to the testimony which they submitted to you yesterday by Andretta, Tesora and Moscola?

Colloquy.

Briefly, it was this. I do not have to take up very much time on that. These three people say that— 1255
this is what they say in effect, that is the substance of their testimony, that somebody called down somebody and said, "Now, listen, you have to go around and get somebody and you will have to get signatures and you will form a company [525] union and you will then deal with us and so on.

Assume that somebody, Mr. Sanford, Mr. Healy, anybody in authority that you like, said that.

For the purposes of the record say that that is true. Let us concede it. How is it developed?

These witnesses tell you that a paper was prepared. 1256
Bear in mind they do not show you the paper. They have not got the paper. I do not think the paper is in existence. It might have been at one time. It is no longer in existence. It is out.

Whether an employe destroyed it, whether the superintendent destroyed it, whether an executive destroyed it, where it is, what it is all about, I do not know.

But, this much we do know. That originally there were some signatures on it.

Moscola told you his signature was on, Tesora, I believe, told you that her signature was on. It seems that not more than a day or two elapsed when the 1257
time the paper first was created, until the time it disappeared, or was destroyed by somebody, I say that not more than a day or two elapsed, or intervened, in which something was done.

What was done?

No actions were had under that paper, no rights
1258 were created or diverted under that paper. Nobody lost a nickel or gained a nickel under that paper.

[526] No wages were reduced. No wages increased. No different time was had, nothing at all, except there was a little running up and down in the factory by some of the employes.

What is the purpose of drawing paragraph 6 of the complaint if everybody tells you, Tesora, Andretta and Moscola, that when they found there was something in that paper which they did not like, they scratched their names off, told Mr. Dorsey to take
1259 it back to Mr. Sanford; Dorsey did that, and when Dorsey came out, he says "All right, tear it up, forget it. It is all over."

Is that a matter for a Labor Board? Is that what they waste the time of people for?

In other words, if you and I, Mr. Examiner, decide to go to Long Beach this afternoon and ten minutes later we decide to change our minds and stay here, is anybody going to find anything on our decision to go to Long Beach?

That is what this means, paragraph 6, on their proof, not on mine, or theirs.

1260 For that they make us come down here, they make my clients pay money for counsel, waste time and expenses, waste your time, waste their time.

Sklar has been sitting here for four days, Graham has been sitting here for four days, these busy Union officials, Galvin and Anderson have been here for four days, for what happened July 16th in the National Licorice Company.

[527] A paper was drawn, it remained in existence two or three days, and then was destroyed.

That is an unfair labor practice. That is a company union.

That is nothing, that is what that is, that is all.

It is meaningless 100 per cent, and amounts to nothing at all.

Everybody conceded that they were about to start something and later nobody was satisfied with it, not the bosses, not the employees, not the committee, and everybody called it off and destroyed the paper.

No rights were lost under it, nobody was harmed under it, nobody ever acted under it, nobody did a thing under it.

Why waste time here with it?

That is this other violation of law which we are supposed to have committed, a violation of Section 8, Subdivision 2.

You know that all that has been washed up by the strike.

And, again, I say, bear in mind the date, July 16th, not the date that I give you, the date that they give you and the proof that they give you.

And, I will say this for them, that every one of their witnesses told the truth when they told you it happened around July 16th, 18th or 19th.

So, I think in all fairness we can forget that, too, because, [528] I am not going to submit any proof on that. I do not care what happened on July 16th.

As a matter of law, it is meaningless because it did not last, it did not exist, it does not exist today.

As a matter of fact, it never existed. Even assuming there was a signature on a piece of paper for three or four days and later was scratched out, that is so.

Contracts or acts of parties are not determined by that kind of method. That proof determines that the parties did not want any union such as is alleged here, any company union.

Not only did not the employees not want it, but Mr. Sanford did not want it because he called it off.

Now, as to paragraph 7.

(There was discussion off the record.)

Mr. Mann: You know as to paragraph 7, Mr. Examiner, it seems to me that they must have a form up there in the National Labor Board which they use in every case, irrespective of what the facts are, because I have seen this thing at least in ten cases, where it is word for word like this.

Now, you know that they have not proved a single thing under here, not a word of proof is submitted to you and I am going to go over this carefully because I never like to say anything unless I can back it up, to show you that they have not got a thing here on this as to proof.

[529] Where is there any proof, where is there any proof that this respondent, I am reading the first six lines of this paragraph 7, where it says, "Urged, persuaded, and warned its employees at said Brooklyn plant to refrain from becoming or remaining members of the union."

The proof is the other way.

Is not that true? When Sanford first addressed them, you heard Anderson tell you, you heard Andretti tell you that, you heard this last fellow, Mascola, everybody said the same thing, not one said that Mr. Sanford or Mr. Healey, or anybody ever said to any man, "You cannot be a member of the union." 1267

Is there a word in this whole record which says that? Just one word?

So, when I say to you that they take these complaints from a form, I think I am right.

Andretti yesterday, when I read to him from a statement which Mr. Sanford made in the record, and I said, "Don't you remember Mr. Sanford saying, 'We have no objections to your being in a union, or not, as you see fit, and under the law we cannot discriminate against you because of your union activity or because you are a member or not a member of a union.'" 1268

He said, "Yes," and then he said he said it.

Now, there is no proof of it, Mr. Examiner, the first [530] five lines of paragraph 7.

Now, look at the next, "Signing of individual contracts a condition of employment."

Is there any proof of that? What did Tesoro say about that, the star witness that they had over here? She said, "Sure, I went out on strike on August 2. I stayed out on strike, one of the last to come back to work, September 20." 1269

That was when she came back, and she took out her little book and said, "I was out of work seven weeks."

I said to her, "Is it fair to say that you were earning $20 a week?"

1270 "That is about right," she said.

Seven times twenty is $140. I said, "You lost that in wages?"

"Yes."

"It became a question of money with me," she said.

Is that her testimony? She had to come back. She was getting hungry. She wanted to eat. She wanted to work. She wanted to carry on what every human being has been given the right to do, to work, the greatest thing in life for any human being.

1271 But, this union stopped her from working by calling this strike and took away from her $140, promising her that they would get her something.

Is there any proof here that they gave her a nickel in [531] the seven weeks?

So, what did she do?

She tells you, Mr. Examiner, frankly, what she did. "I voluntarily came back to work. And I was one of the last to come back. And they asked me to sign a contract and I read it and I did voluntarily, of my own free will, sign it."

I asked her, "Did they coerce you, did they threaten
1272 you, did they intimidate you?"

"I do not know what those words mean."

So, I said to her, "You remember that yesterday"—he, Mr. Sklar, objected. That is the allegation in his charge, but he objects.

They do not know why they object. He objects.

So I said, "You define to her what those words mean."

So he says, "I am not cross examining the witness."

"All right," I said, "I will tell her."

"Coerce means to force, intimidate means to threaten, threaten means to threaten, about the same thing; did they do that?"

"No, I signed it voluntarily. I went back. I saw it was no use in staying out on strike any more."

Is the National Labor Relations Board here to tell the worker not to go back when she wants to come back?

Is that the purpose of the Board? Is that what the Act was written for?

[532] Yet, they bring you in here, Mr. Examiner, and compel you to listen to this for four days.

Now, the next thing, "That the company had threatened to close down its said Brooklyn plant and to move to another city if its said employees join or assisted said union."

Is there any proof of that? Is there a word that anybody said that?

Sure, they closed down their plant. Certainly they did. When 100 per cent of the workers go out on strike on August 2 and they have not got anybody to work with and they have not got any people to make a fire in the plant to cook this licorice and they haven't got anybody to pour the ingredients into the vats, they might as well close down.

They can sit and read their newspapers at home. They do not have to come to John Street in Brooklyn to read newspapers.

Sure, they closed down. Who is at fault there?

Well, you know the answer, Mr. Examiner, don't you?

It was not the fault of the National Licorice Company. They know what they can do when it comes to wages. They know how much they can afford to pay their workers.

You and I do not know it. Mr. Sklar does not know it, and surely, Galvin and Anderson do not know it. And, as to Galvin and Anderson, they do not even care to know it.

"Has made raises in pay conditional upon non-membership [533] in the union."

I was now reading another clause in paragraph 7.

There is no proof as to that. They made no raises in pay conditional upon membership, not a word of proof, not a word of evidence. Not a word of proof that it has been done or not a word of proof that it would be done or made any such statement.

"Has threatened said employees with discharge and other reprisal if they became or remained members thereof and did not become members of the organization referred to in paragraph 6."

The answer to that is that there was no organization referred to in paragraph 6. I have pointed that out to you clearly, that that organization never existed, it never functioned, there were a couple of names on a piece of paper for two days which was later crossed out.

That is what they call an organization.

If that is an organization, as Al Smith once said, "I am a Chinaman."

And, reading further, "And has kept under sur-

veillance the meetings and meeting places of said union members employed at said Brooklyn plant of the respondent as aforesaid." 1279

Any word about that, anybody kept anything under surveillance? Did you hear the word "surveillance" used here [534] by any witness? That disposes of paragraph 7.

I think that up to now, Mr. Examiner, I have demonstrated conclusively—I went over this thing last night,—that so far you have not got a word of evidence sustaining the complaint.

Now, let us see some more of this. I am convinced that when I am through with this discussion I will have demonstrated to you that there is nothing to proceed with here, and there is not a word, there has not been a word offered here which creates even the semblance of an issue. 1280

Paragraph 8, another brilliant example of pleading and of pleading facts.

Let me read it, it is very short, three lines.

> "And on August 2, 1937, respondents' employees in said Brooklyn plant went on strike because of respondent's acts described above in paragraphs 5 to 7, inclusive. Such strike has continued down to and including the date of the issuance of this complaint." 1281

The only words of truth that are in that paragraph are the first twelve words, "On August 2, 1937, respondent's employees in said Brooklyn plant went on strike."

In other words, there is not another word of truth in that allegation. I am going to show you why.

Colloquy.

The next words, "—because of respondent's acts
1282 described above in paragraphs 5 to 7, inclusive." But, I have [535] also demonstrated to you, Mr. Examiner, that there has nothing been proved here about respondent's acts described in paragraphs 5 to 7, inclusive. They have not proven any acts.

So, if they did not prove any acts, they could not—there could not be a strike because of acts that were never proved. So, that is meaningless.

"Said strike has continued down to and including the date of the issuance of this complaint."

1283 Do I need to spend any time on that?

I tell you, there has not been a strike there since September 20th, at which time they were all back to work there.

They tell you that because Blasi and Andretti have not had the nerve to come back to ask for their jobs back, they both said that, at least Andretti did. Blasi did not even take the witness stand.

I said to Andretti, "Why did not you go back?"

"I heard somebody tell me that I would not be taken back."

1284 Well, Mr. Big Shot, why don't you go back and ask for your job? That is the first thing anyone does.

"Have you worked?"

"No."

"Since when have not you worked?"

[536] "Since August 2."

"Are you married?"

Colloquy.

"Yes. Got two children."

"Are you working for the union?" 128

"No."

"What time do you come down there?"

"At 8:00 o'clock in the morning."

"When do you quit?"

"6:00 o'clock."

I do not know where the limit to perjury is. I really mean this, when a man says he is not working for the union, he gets no pay, comes in from 8:00 to 6:00, that is pretty close to having the whole thing sent over to Mr. Conboy. 128

After all, what are we, fools here? Are we idiots?

We must think so. He does not go back to ask for his job back and then they, Mr. Galvin's brilliant union, tells you that that is why the strike is still on.

Now, if that is not the aggravating piece of nonsense, the most aggravating piece that I ever heard of, and that they want you to believe—

Then, paragraph 9, now, they come to a legal conclusion, namely, that by doing these things which they say we did in their complaint, but which, of course, they have not proved, we have first been guilty of an unfair labor practice within the meaning of 128 Section 8, Subsection 2.

[537] Trial Examiner Korey: Do you think it is necessary to go into the conclusions on that?

Mr. Mann: That is right.

Now, I want to thank you, Mr. Examiner, for listening to me patiently here.

I want to thank you for taking the copious notes
1288 which you did today. I have watched you from the first day that you did start it. I do it the same way. I try to take notes of the witnesses' testimony so that I know what they are talking about.

I submit to you, in all fairness, that there is not a scintilla, and when I say that I mean it 100 per cent, of evidence here which I am called upon to refute, Mr. Examiner.

I had an idea this morning that I would bring you Capt. Richter. In fact, I told Mr. Healey to bring him over here, that—you remember when you came in,
1289 Healey told me that he could not get him and he needed a subpoena.

So, I asked for a subpoena in this case because I wanted to bring him over.

For what purpose? Only to show you how these people deviate from the truth when they say they were locked in the plant there.

Here is a Captain of Police who would come here and tell you what happened, who called him up, what he saw, what he [538] did there, and so on.

I will say, outside of that, I will tell you frankly, I do not intend to put on any more witnesses. For
1290 what purpose?

I am not going to waste your time and my time. If they have not shown anything, I am not supposed to answer anything. That is why I ask you, Mr. Examiner, to ask Mr. Graham to say, on the record, what he claims he proved.

So, you preferred to do it the other way. You should say that I should argue first, which I have done.

Now, if you want Mr. Graham now to refute this, I will be delighted to listen, and I am delighted to argue this thing out with you, because I think that we are here this morning in real constructive work, because, if we can all be satisfied that there is no issue, then this thing is through.

If there is an issue, and I agree with what you say or with what Graham says, I will bring you proof to meet it.

First, I must be convinced that there is an issue. At this moment, I am 100 per cent convinced that on the proof you have had here since Wednesday afternoon at two o'clock and last night, Friday night, at 5:30, there is nothing for me to refute.

At this point I ask that the complaint be dismissed in its entirety.

[539] Mr. Graham: I am quite ready to argue along the line laid out by counsel for the company, but in my argument, I, of course, would not guarantee to include all facts shown upon the record.

Trial Examiner Korey: However, Mr. Graham, do you think it is necessary to have it on the record? I can understand why Mr. Mann would like to have it on the record.

Usually we do not permit arguments to go on the record except in unusual cases and in unusual circumstances.

Mr. Mann felt that he should have it on the record, and I granted him that privilege. Do you feel it necessary to have your argument on the record?

Mr. Graham: I have no desire one way or the other.

(There was discussion off the record.)

(Whereupon, a short recess was taken, after which proceedings were resumed as follows:)

Mr. Graham: I would like to say at this time, for the record, that I am quite willing to present my argument on this motion on the record, because the argument is based upon and adduced from only those facts which themselves appear on the record.

I would say, further, however, that if the union and the Examiner are anxious that the record be shortened in order to avoid additional and unnecessary cost, that I am quite willing to have the argument which I am to make off [540] the record.

Trial Examiner Korey: In view of that, I believe we ought to have your argument off the record, and we will handle it in that way.

Mr. Graham: Very well, Mr. Examiner; I am perfectly willing to do it either way.

(There was discussion off the record.)

Trial Examiner Korey: After hearing both sides so adequately set forth their contentions with respect to the motion to dismiss the complaint, I will reserve decision on that point.

(There was discussion off the record.)

Trial Examiner Korey: We will adjourn at this time until 9:00 o'clock a. m., Monday, October 18th.

(Whereupon an adjournment was taken in the above-entitled matter to Monday, October 18, 1937, at 9:30 o'clock a. m.)

[541] BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY.

Room 419, Old Post Office Building,
New York, New York,
Monday, October 18, 1937.

The hearing was resumed, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

H. R. KOREY, Esq.,
Trial Examiner.

Appearances:

CHARLES E. GRAHAM, Esq. (233 Broadway, New York, New York), on behalf of the National Labor Relations Board.

KOTZEN, MANN & SIEGEL, Esqs. (51 Chambers St., New York, N. Y.) Attorneys for Respondent, by ABRAHAM MANN, Esq., and JOSEPH YASPAN, Esq., of counsel.

KALMAN SKLAR, Esq. (521 5th Ave., New York, N. Y.)
1300 appearing for Bakery & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity.

WILLIAM A. GALVIN (245 West 14th St., New York, N. Y.) President of Bakery & Confectionery Workers International Union of America, Local 405, Greater New York and Vicinity.

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[542] PROCEEDINGS

1301

Trial Examiner Korey: The hearing will now come to order.

(There was discussion off the record.)

Mr. Mann: On convening this morning, October 18, in order for the respondent to proceed with this case, I wish to state that on Saturday morning, October 16, I made a long motion to dismiss the complaint, which was taken down on the record and which is part of the record in this case.

1302 The Trial Examiner reserved decision on the motion.

Thereupon, I went over to the office of the Regional Director, which is across the street from the place where this hearing is being conducted, and I applied there to Mrs. Herrick personally for a subpoena for a police officer, a police captain, his name being Richter—Captain Richter, of the 84th Precinct, Brooklyn.

When I came in to Mrs. Herrick I was told that I would have to make an application in writing for 1303
that subpoena, which would state the nature of the testimony that this witness would give on behalf of the respondent.

This I did, and on a sheet of paper I wrote out what I desired and what he was going to have to testify to, and Mrs. Herrick then told me that she would telephone to Washington to see whether I could get that subpoena.

I told her then that I would have to call this witness [543] the first thing Monday morning as it was my 1304
desire to call him first in order to proceed properly with my defense.

She said she would see what she could do.

When I came into the hearing this morning, the first thing I asked was whether that subpoena was available, and I am told that it is not.

I asked Mr. Graham about the subpoena and he said that he knew nothing about it, I would have to go over to Mrs. Herrick again to find out about it.

Thereupon, I sent over my associate to Mrs. Herrick and he was told that the subpoena was not available but that I should now telegraph to Washington for that subpoena. 1305

I wish to state on the record that, in my opinion, as a lawyer, this sort of method of procuring a subpoena for a witness is absurd, tends to defeat the rights of respondent on a hearing, is prejudicial to a hearing, makes it necessary for a lawyer to do work which he should not be required to do in a hearing,

distracts his attention from the hearing and is absolutely an unfair proceeding in a quasi-judicial proceeding.

It seems to me that a subpoena for a witness should be voluntarily given, the respondent's attorney should have a right to issue his own subpoena, and if he cannot do that, the Board should make it available through the Trial Examiner to have subpoenas in the Board room or in the hearing [544] room where those subpoenas may be signed by the Trial Examiner, delivered to counsel and served on the witnesses that counsel for the respondent expects to call.

I wish to state that at this time I cannot proceed with this hearing and will not proceed with this hearing until I have a subpoena for Captain Richter, who I wish to call as my first witness, and who I consider necessary to be called as my first witness, before calling anybody else.

Mr. Graham: I would like to state just one sentence for the record.

I would like to say that the testimony adduced at this hearing relating to matters for the purpose of clearing up which matters counsel now wishes to call Captain Richter, was adduced on Wednesday, October 13, that the request for a subpoena was not made until Saturday afternoon.

The other facts are stated.

Mr. Mann: May I say, in answer to that, I wish to say that I did not know until Saturday afternoon, after my position—after I made my motion to dismiss the complaint whether or not it would be necessary for me to proceed with my case or not.

It was only after the Examiner reserved decision on my motion to dismiss that I then realized that I would have to proceed Monday morning. 1301

I repeat, again, as soon as I knew that, immediately I [545] went over to Mrs. Herrick for this subpoena, which I have not gotten up to the present time and that this statement is being made at 10:20 o'clock a. m., on the morning of October 18th.

Trial Examiner Korey: Mr. Mann—

Mr. Mann: Yes, Mr. Korey.

Trial Examiner Korey: This morning I spoke to Mrs. Herrick as to whether or not she had made a request to Washington for the subpoena you requested and to whom such subpoena was issued. 1311

She told me that she did call Washington soon after you called there. She tried to get Washington about 1:00 o'clock on Saturday, and the office was either closed or she could not get the proper party in order to have this subpoena issued.

She also informed me that Washington directed her to ask you to make your application by way of telegram again this morning and give the necessary facts for the issuance of the subpoena, and that she thought that Washington would, during the day, order it by telegram or telephone, order the issuance of the subpoena. 1312

The Board is the only power through which the subpoena can be issued. The application for subpoena, under our rules, shall be made timely and shall specify the name of the witness and the nature of the facts to be proven by him, [546] and so forth.

That is under Section 21 of the Rules and Regulations.

1312

I will afford you ample opportunity, Mr. Mann, if you so desire, to have a short adjournment and to put any other witnesses who may be able to refute any of the testimony adduced by the Board.

Of course, I am not trying to tell you how to try your case in the chronological order in which you wish to do it, or the witnesses you want to call, but, it seems to me, that the officers of the company or the respondent company would have direct knowledge as to any of the facts you wish to adduce by Captain Richter, whom you can probably get during the day, and through such officers or any other witnesses, whatever facts you wish to present to the Board can be presented to them.

1313

The testimony with respect to Captain Richter was first brought out, as I recall it, and as the record will show, on Wednesday afternoon and throughout the ensuing days.

Again, I must call your attention to the fact that timely applications are to be made for subpoenas, and, again, I will also call your attention to the fact that there was ample opportunity—there is ample opportunity to call other witnesses with respect to that particular issue, or any other issues that have come up throughout the years.

1314

You can put them on the stand and perhaps before the [547] day is over the subpoena order will be here and you can then subpoena Captain Richter.

Mr. Mann: In answer to the Trial Examiner, I wish to state that I appreciate what you say.

However, on looking over these rules, I find that Section 21 thereof states, that applications for the issuance of such subpoenas may be filed by any parties of the proceeding with the Regional Director or during the hearing with the Trial Examiner.

Now, this is an application for a subpoena made during the hearing and if I can read English and understand English thoroughly, it seems that my application for the subpoena should be made to the Trial Examiner and not to the Regional Director, because it is an application for subpoena made during the hearing.

Now, I applied for this subpoena on Saturday. Under this rule, I do not see why I was asked to go over to the Regional Director at all.

Trial Examiner Korey: If you had applied to me, maybe I would have recommended it then.

As a matter of fact, this morning again I recommended the issuance of the subpoena and Mrs. Herrick took it up, and I spoke to Washington directly myself, and Mr. Wolf, our Chief Trial Examiner and Secretary of the Board, and told them that the application for the subpoena was recommended.

[548] He then again apprised me of the fact that the application should have been made in a timely manner in accordance with the rules.

(There was discussion off the record.)

Mr. Mann: I will call Mr. Healey.

WALTER J. HEALEY a witness called by and on behalf
1318 of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Mann) Will you please give us your address, Mr. Healey? A. 46 77th Street, Brooklyn, New York.

Q. Mr. Healey, you are an officer of the National Licorice Company? A. That is right.

Q. What office do you hold? A. Assistant secretary.

Q. And you have been an assistant secretary for how long
1319 a period? A. Approximately nine years.

Q. And how long have you been with the National Licorice Company? A. Twenty-three years.

Q. Now, since the commencement of the hearing on the afternoon of October 13th, you have been sitting here steadily, [549] have you not? A. I have.

Q. And you have been the one officer of the company that has been present at the hearing, listening to the testimony offered on behalf of the Board, is that correct? A. That is correct.

Q. Now, what is the general nature of the business of the National Licorice Company? A. The major part of our
1320 business is the manufacture of licorice confections, incidental in the business is the selling of licorice raw materials to drug and pharmaceutical houses, patent medicine manufacturers, and things of that nature.

As I said before, the bulk of our business is the manufacture of licorice confections and specialties.

Q. And the company is in existence how many years? A. As a company, it was incorporated in 1902. There was a

merger of a number of other manufacturers of licorice confections and specialties. We claim our antecedents to date back to the year 1845.

Q. Now, you had three plants in the United States, is that right? A. That is so.

Q. The one in Brooklyn, which we are talking about here, one in Moline, Illinois, and one in Philadelphia, Pennsyl- [550] vania, is that right? A. That is right.

Q. And you also have a plant in Montreal, Canada, is that right? A. That is so.

Q. And now, will you give the Trial Examiner a general idea of this plant in Brooklyn, how big is the building, how many floors does it contain, what departments are there in the building, and a general idea so that he may have it before him. A. Why, it is a brick building located between Bridge and Gold Streets and running through from John Street to Plymouth Street.

On the Plymouth Street side of the building it is four stories high. On the John Street side it is five stories.

The ground floor holds our office, shipping department, a room that we refer to as the cooking room, which is about the best way it can be explained, it is for the cooking of licorice batches.

The second floor is a packing and receiving department.

On the John Street side of the second floor the packing of cases and assembling of boxes for shipment is done. There is an elevator at that end of the building to take the boxes down to the shipping floor, which is directly below it.

The balance of the floor is used as a storeroom for [551] various materials we take in, such as paper boxes, molasses, and wooden cases and things of that nature.

At the end of that floor, I might state, there is a long sliding door, that I might estimate to be about 18 feet wide. Outside of that door, there is a grating, or, we might say an iron fence that slides back. It is a sort of a telescopic thing, when you push it back it folds up like an accordion.

At that end of the building, to the right of that door, there is an entrance to the hallway that runs from the ground floor to the roof.

At the other end of that particular floor there are two doorways, one leads out to a fireproof stone stairs and the other end the stairway leading down into the shipping department.

The next floor is devoted to packing pieces that have been manufactured in the individual cartons, boxes.

There are machines, very large dry rooms, in which goods are put to dry out; they have to be seasoned, the steam is turned on in these rooms and goods are kept in there from time to time until they dry up.

Running that from that floor is a corridor and a fireproof doorway leading into an adjoining building called 19th Bridge Street, that is used as a dressing room, and a lunch-room in the same building, and we also have a machine [552] shop and store cartons and boxes and things of that nature.

We proceed then to the fourth floor, which is substantially the same as the third floor. We have machinery, girls pack some little pieces, we have dry rooms.

Q. I think that is sufficient. A. I might conclude by saying the fifth floor is practically identical with that.

Q. You talk about machinery. Does the company have valuable machinery in the plant? A. Very valuable.

Q. Could you give us an estimate of what the value of the machinery is in the Brooklyn plant? A. It would have to be a hapliazard or wild guess. There is one machine that we paid $7500 for, that machine alone, just one machine. We have, as you probably realize, in a plant of that size, hundreds of machines.

I might say, too, that most of these machines are our own creation, made under secret processes. It is hard to put an actual value on it.

Competitors would probably put a value of many times the actual cost to us.

Q. And have you got furniture in the building, too? A. Naturally, we have very attractive looking dining rooms with marble table tops or slate tops of some kind.

We have the little offices fixed up in the building for [553] some of our foremen, equipped with desks and chairs.

The girls have chairs to sit on.

We have racks, very expensive racks, that we put the tins of completed and manufactured goods on.

We have throughout the whole plant some valuable furniture, yes.

Q. Mr. Sanford is the president, is that right? A. That is right.

Q. The name of Smylie has been mentioned here; who is Mr. Smylie? A. He is our secretary and treasurer, now.

Q. There has been some testimony given that there were conferences in the—I am now talking about the strike—conferences with Mr. Galvin and Mr. Anderson and the officers of the company, and also conferences over at the Labor Board with Mr. McCann, and other conferences have been mentioned in the plant, with the workers.

I want to ask you whether you were present at every con-
1:330 ference, either with Galvin and Anderson or other men of the union, with workers in the plant, or conferences with the Regional Director in the Woolworth Building, or our subordinate, Mr. McCann. A. I was.

Q. You were present at those conferences? A. I was present. I might say Mr. Sanford took no step [554] without having me there with him.

Q. So, you know everything Mr. Sanford knows? A. I certainly do.

Q. About the facts in this case? A. Yes, sir.

Q. And is that answer true for all the facts during the
1:331 strike and everything connected with conferences after the strike?

Mr. Graham: I object, because I think it is impossible to answer that question. He could not know everything that Sanford knew.

Mr. Mann: I mean, was he present with Sanford at all of those conferences.

Mr. Graham: All right, just the conferences. Limit it only to the conferences.

Mr. Mann: That is right.

1:332 A. Yes.

Q. (By Mr. Mann) Now, there has been offered in evidence here by the Board, a telegram which is respondent's exhibit No. 1. I want to ask you whether anybody in your plant knew anything about any union, or about any organization of the workers until the receipt of that telegram.

Mr. Graham: I object. The witness is not competent as to whether anyone in the plant knew anything

Trial Examiner Korey: I will sustain that objection. [555] It is a little wide.

Q. (By Mr. Mann) Did you or did Mr. Sanford or you, to your knowledge,— A. I cannot say that either I or any of my associates had an inkling that there was a union in the process of being formed, or anything.

As a matter of fact, there was no idea that there was any dissatisfaction upstairs at all.

Trial Examiner Korey: As far as you knew?

A. As far as I knew, I can say that without provocation.

Mr. Graham: I move to strike the answer, as far as it relates to the dissatisfaction.

The Witness: I am trying to define it to your satisfaction.

Mr. Mann: I am asking you, if you knew anything about the union.

The Witness: Nothing at all.

Q. (By Mr. Mann) And the first time that you heard about a union was on receipt of this telegram, is that right? A. That is correct.

Q. Now, when the telegram came in, did you read it together with Mr. Sanford? A. I received and opened the telegram.

Q. You received the telegram and opened it? A. I did. I read it and immediately took it into Mr. [556] Sanford and Mr. Smylie was present at the time.

Q. Was there then a discussion about the wording of the telegram? A. There was a decided discussion.

Q. Tell the Examiner just what was said about that.

336 Mr. Sklar: That is objected to. It is not binding upon the union or the petitioner.

Trial Examiner Korey: Give us the result of that discussion.

The Witness: We were puzzled as to whether or not it was a legitimate telegram. We had for several years—we had been approached by various labor organizations with requests for tickets and contributions to their organizations, and I, in the back of my mind, and I remarked to Mr. Sanford, "I wonder if
337 this is another shake-down."

We read the telegram very carefully to see if there was anything in it that might dispel these doubts that we had. I had been reading quite a lot of these labor cases and I noticed in the telegram that there was no mention made of the fact that they claimed to represent a majority of our employees.

It seemed peculiar, and I injected the remark that, "Well, maybe those are some fellows, that have had one or two difficulties—they have several discontented workers and they are trying to horn in on our company, so to speak."

338 [557] Mr. Sanford looked the wire over and there was nothing in it that made us feel that it was a legitimate telegram and that they did represent a majority of our workers.

It was very carelessly phrased, if I may say so. It simply said that they represented our employees, whether one, two or twenty, was left to our imagination.

Q. (By Mr. Mann) Did you hear Mr. Galvin say on his examination here on Thursday that he did not take any dues from any of these applicants because there had been some phony organizations, or some phony representative of an organization who had stolen money from workers in the neighborhood? Did you hear him say that? A. I heard that testimony. 183

Q. Did you know about that? Did you know that something like that was going on? A. We had heard any number of instances of labor organizers claiming to represent workers, soliciting funds and claiming, because they did represent workers, they were entitled to ads in their papers and things of that nature. 184

I remarked at the time that this might be one of them.

Q. Was that the reason that you did not answer this telegram?

Mr. Sklar: I object to that.

Q. (By Mr. Mann). Did you answer the telegram? A. We did not.

[558] Q. Now, on July 16th, there is testimony here that Mr. Sanford addressed the workers, do you remember that? A. That is my recollection. 184

Q. Were you present at that address? A. I was.

Q. Tell us what Mr. Sanford, and what you, if you said anything, said to the workers at that time? A. Well, in testimony brought up here—

Trial Examiner Korey: Do not tell about the testimony. You tell us, tell us what you said.

A. I did not introduce Mr. Sanford. It would have been
I 3342 presumptuous of me to introduce a man that is in the plant more frequently than I am. He was introduced by our factory superintendent.

Mr. Sanford then proceeded to tell the workers their rights under the Wagner Law.

Trial Examiner Korey: Who is the superintendent? Mr. Dawson?

The Witness: Mr. Dawson.

Q. (By Mr. Mann) What did he say about their rights
I 3343 under the Wagner Law? A. He said, as I recall it, "several of our employees had spoken to me about their rights under the Wagner Act. I would like to explain just what these rights are, as far as I know, as some of you may know, you have a perfect right to [559] join any union you care for. They may bargain for you if you so desire. If you do not care to, you have the right to organize your own bargaining agency. That is a matter of supreme indifference to us. We will be guided entirely by any decision you, as our employees, arrive at."

"If you select a bargaining committee, we will deal with them; if you decide to let a union bargain for you, we will,
I 3344 under the law, have to deal with that union. It is optional with you."

Q. What did he say about discrimination? A. "Whether you do or do not belong to an outside union, there will be no discrimination against any workers in our plant."

Q. Did you hear all of this? A. I was right at his elbow.

Q. Some witness testified here that Mr. Sanford said, "Why did you have to go to an outside union?" Did he ever say

anything like that? A. That is absolutely incorrect. He made no such statement or remark at any time during the discussion with the employees.

Q. Now, when is the first time after the receipt of this telegram that you or Mr. Sanford saw anybody from this union, and, by the way, in connection with that, I call your attention to the names signed to this telegram.

[560] I show you this, respondent's exhibit No. 1, and call your attention to the signature on the telegram, Bakery & Confectionery Workers International Union of America, Local 405, William A. Galvin, President.

And, now, I call your attention to the letter purporting to have been written by this union on August 3, wherein it says, Biscuit & Cracker Workers Local Union No. 405.

Trial Examiner Korey: Also, B. C. W. I. U. of A.

Q. (By Mr. Mann) The names— A. It does not say that, also.

Trial Examiner Korey: I say, also.

The Witness: Oh, I see.

Q. (By Mr. Mann) The names are different, are they not? A. Decidedly.

Mr. Sklar: That is objected to.

Mr. Mann: That is evidence.

Trial Examiner Korey: The record will speak for itself.

Q. (By Mr. Mann) When was the first time after the receipt of this telegram that you had a conference with anybody from the union, from some union? A. On July 20th.

Q. Where? A. At our office, 6 John Street.

1348 Q. Who did you confer with at that time? A. Messrs. Galvin and Picariello, as I got the name. I may [561] not be right about it, but that is as close as I got it.

They came into our office.

Q. In this connection, somebody said here, I believe that it was the 19th. A. A number of them said the 19th.

Trial Examiner Korey: They said the 19th or 20th.

The Witness: It was the 20th.

Q. (By Mr. Mann) It was the 20th? A. About the 20th.

1349 Q. And the conversation which they referred to as having taken place on the 19th, you say, was on the 20th? A. It was the 20th.

Q. And it was at your office? A. That is correct.

Q. And what time of the day was it? A. It was in the morning, I approximate the hour at ten o'clock.

Q. And, you say, Mr. Galvin and Mr. Picariello came in? A. That is right.

Q. That was the first time in your life that you had ever seen these gentlemen? A. It was.

Q. Or anybody had seen them? A. Anybody in our office had seen them.

1350 Q. Or anybody in your office? [562] A. Yes.

Q. Did Mr. Picariello have a bag with him? A. Yes, he did.

Q. Did Galvin have anything with him? A. Not that I remember.

Q. Well, when they came in, they were ushered into somebody's office? A. I greeted them at the reception gate that we have.

Q. Yes. A. And took them into Mr. Sanford's office. I introduced them as best I could. These gentlemen claimed to 1351
be the men that sent us the telegram.

Q. And Mr. Anderson was not there at the time, was he? A. No, he was not.

Q. Well, who spoke first? A. Mr. Galvin spoke first.

Q. What did he say? A. "Mr. Sanford, I presume you know why we are here."

Q. What did Sanford say? A. "We have a hazy idea of why you are here."

Q. All right. Go ahead. Tell us what everybody said then. A. Mr. Sanford said, "I presume, Mr. Galvin, you have credentials to prove that you are a union representative?" 1352

Galvin said, "Yes, I have here a card."

He laid down a card on which he was shown that he was [563] president of the Biscuit & Cracker Local Union.

Q. I show you respondent's exhibit No. 6.

(The witness was shown the exhibit in question and examined it.)

A. Yes.

Q. (By Mr. Mann) Is that it? A. That is the card.

Mr. Graham: Will you read the identity of the union which appears on the card? 1353

The Witness: "William A. Galvin, President, Biscuit & Cracker Workers Union, No. 405, Greater New York and Vicinity."

In the lower left hand corner, in smaller type, "Bakery & Confectionery Workers International Union of America."

Q. (By Mr. Mann) You do not see any "Local 405" after
1354 the last words you read, do you? A. No, there is no such specification on the card.

Q. Well, after he handed you the card, what was the next thing that was said? A. We then tried to get them—we tried to definitely determine whether they were an A. F. of L. union or a C. I. O. union or an independent union.

Mr. Sanford said, "Mr. Galvin, have you any proof that you are a member of the A. F. of L.?"

Mr. Galvin said, "I have my card here," and he brought [564] out a card that he had in his wallet. It was a membership card in some union. Mr. Sanford said, "That is no
1355 definite proof that you are president of this particular union. I still do not know whether you are an A. F. of L. affiliate or a C. I. O. member."

Galvin said, "Well, you can determine that for yourselves. You call William Green, who knows me very well, or Mr. Something-or-other," whose name I do not remember, "and they will tell you who I am and what I am."

"Are you quite sure, Mr. Galvin," said Mr. Sanford, "that you are an A. F. of L. affiliate? I sure have my doubts."

He said, "That can be determined by you. Just call up William Green, President of the American Federation of Labor."

1356 Q. Yes; what did Mr. Sanford say? Did he offer to call Mr. Green? A. He said, that it did not appear to him that it should be necessary for us to go to such lengths to determine whether or not he represented our workers, what his affiliations were, that it seemed to us he should produce some proof. Had he been to the Labor Board to convince them that he was the bargaining agent for our employees?

Q. This is what Sanford said? A. This is Sanford's remarks to Galvin. 1357

[565] He said, "No, he had not been to the Labor Board. He may or may not go. But, the Labor Board was not of any particular interest to him. What they did or did not do, was really relatively unimportant, that labor had other weapons much stronger than the Labor Board and that the arm of labor was long. It was like an octopus that stretched out in many directions and shortly he made quite an oration on the subject.

Q. Did he use those words, that labor, that the arm of labor was like an octopus stretching his arm out in many directions? A. Those things stuck in my memory, so that I will never forget them. 1358

Q. After that chat, did you ask him what evidence he had to satisfy you that his union, whichever one it is, or was, represented a majority of the workers? Was there a request for that? A. He said, "If you do not care to go to the Board, Mr. Galvin, have you anything around you that will prove to our satisfaction that you do represent the majority, or which will prove how many of our workers you really do represent?"

He said, "I have Mr. Picariello, he has in his bag membership cards of all the employees of your plant." 1359

Trial Examiner Korey: Did he say membership cards or applications?

[566] The Witness: Membership cards. "I stress that, of the A. F. of L., the employees of your company, of your Brooklyn factory, I should say, who signed up with our union. Would you care to let us see those?" said Mr. Sanford.

"Very gladly," was Galvin's reply, and he turned
1360 around to Picariello and said, "Let me see one of those cards."

He brought out a square card, I should think five or six inches square, or, I would say that would be five inches in each direction, width and length.

As I recall it, it was blue, although my recollection of the color is not clear. It was either blue or white. I believe it was blue.

He said, "Here is one of them."

We said, "Is that an original membership card, Mr Galvin?"

1361 He said, "No, that is a typewritten copy."

We said, "Well, you could sit down at the desk and find the names of everybody in our employ, write out these cards, and that would not necessarily be proof that you had signatures. You could easily get the names of employees, of everybody in our employ, and type out cards for them and come in here and say you represent them. Have you the original cards that they signed?"

At that time we knew nothing of these pink applications, of course.

1362 [567] Q. When you refer to the pink applications you refer to Board's exhibit No. 8, which is the union application blank? A. That is right. They have produced them in evidence.

Q. Yes. He did not show you anything like that on that day, did he? A. No, he did not.

Q. Did he show you a single paper, pink application blank

which has been introduced here as exhibit No. 8? A. At no time.

Q. The only thing he showed you was a single card, is that correct? A. A single card, typewritten.

Q. Typewritten? A. Yes.

Q. No signature on it? A. No signature of any type.

Trial Examiner Korey: Did Galvin ever offer to produce these original applications?

The Witness: What is that?

Trial Examiner Korey: Mr. Galvin, did he ever offer to produce these original applications, Board's Exhibit No. 8?

The Witness: At no time did he offer to produce that, no, sir.

Q. (By Mr. Mann) In this connection, there has been some [568] testimony here that Mr. Sanford said he did not want to see any application blanks, is that true? A. That is false in every respect.

Q. Go ahead. A. We asked him if he had any signed applications or cards, on his person, or with him, that would convince us that he really had these memberships that he claimed.

He said, "Yes," that he had in Picariello's—that in Picariello's bag were the cards bearing the signatures of 51 per cent of their employees,—of our employees.

I then said, "Are you willing to let us look at them, Mr. Galvin?"

He said, "Yes, perfectly willing to let you look at them."

Mr. Picariello then injected himself and said, "No, no, no; they cannot look at those original signatures."

Galvin said, "Why?"

He said, "They will take those names and they will use
1366 them to intimidate their workers. We will not produce them. It is a request that I have never heard made before."

Q. Picariello said that to Galvin? A. Yes.

We said, "You expect us, who have never seen either one of you before, never heard of your union before, you expect us to sit down at a table and enter into a bargaining arrangement, [569] with total strangers, with no proof of representation of our workers? We are supposed to sit down at a table and bargain with you?"

Galvin said, "Well, that is entirely up to you. Here are our demands."

1367 So, he handed out a paper with a list of, I do not know how many, demands.

Q. When you refer to that statement of Galvin's, you are referring now to respondent's exhibit 2, which I will ask you to look at, and see whether that is the paper he put down on the desk and said, "Here is our demands"?

(The witness examined Exhibit No. 2, of respondent.)

A. This is the paper he presented.

Q. (By Mr. Mann) That is the paper he put down on the
1368 desk, and he said, "Here is our demands," is that right? A. That is right.

Q. Did he throw it on the desk or did he hand it to you? A. He handed it to Mr. Smylie who was facing—I mean, to Mr. Sanford, who was facing him and who had his back to his desk. Mr. Sanford took it, turned around and placed it on his desk. He said, "Mr. Galvin, this thing runs over quite a few pages here, and, obviously, it would be impossible

for me to read this all and digest it and give an intelligent answer to any of it, even provided we did know you represented our employees. Leave it here and we will look it over." 136

[570] Q. He did not throw it over his shoulder, as somebody testified here? A. Mr. Sanford is always a gentleman—

Mr. Sklar: I move to strike that out. Let him answer the question, yes or no.

The Witness: I say, no.

Q. (By Mr. Mann) All right; then what was the next thing that happened? A. After Mr. Sanford's statement that we would require some time to look it over and that we would also like proof, some proof that a business house could take as proof, that they did represent our employees, we would be very glad to arrange another interview with them. 137

Galvin apparently was a little provoked that we did not accept him at his face value, mumbled a few things that I or nobody else in the room caught, and said, "Well, gentlemen, you will see more of us."

With Picariello, they picked up their bags and both left the office.

Q. How long would you say that that interview lasted, from the time they first came in until they went out, as you just described? A. The best part of two hours, some place between an hour and a half and two hours. 13

Q. On this July 20th? [571] A. Yes.

Q. I am now talking about July 20th. A. Yes.

Q. And not July 29th. A. Yes, July 20th, it was, as I said, that was the first call with Picariello and Galvin. Some place between an hour and a half and two hours. They hemmed and hawed and exchanged—

Mr. Sklar: I object to that; I move to strike that
1372 out.

The Witness: I am merely trying to explain.

Q. (By Mr. Mann) The time is enough, as you described it. They were sitting in chairs, Picariello and Galvin? A. No,—yes, most of the time. When they first came in they stood up for a little while and walked over to Sanford's desk with this card that they laid on his desk, and after awhile they looked into Picariello's brief case.

Galvin made quite an oration and it took quite some time.

Q. All right. So they finally left? A. Yes.

1373 Q. Now, since Galvin on that morning had submitted no proof to you or to Mr. Sanford which convinced you that their union, whichever union it was, represented the workers, or a majority of the workers, did you and Mr. Galvin send for [372] the workers in the afternoon of July 20th?

Mr. Graham: I object because the question calls for two answers. There is an implicit question involved in the "since" clause and there is another question in there, too.

Mr. Sklar: I object also because the question is leading.

1374 Mr. Mann: I will re-frame it.

Q. (By Mr. Mann) After they left that morning, or that afternoon, July 20th, did you subsequently and on that same day, you and Mr. Sanford, send for the workers? A. We did.

Q. And what was the first thing that you said to the workers, you or Mr. Galvin?

Trial Examiner Korey: Mr. Sanford, don't you mean?

Mr. Mann: Yes; thank you.

Q. (By Mr. Mann) Yes, you and Mr. Sanford, about their rights under the Wagner Act on that afternoon? A. "Last week," said Mr. Sanford, "I addressed some remarks to you on your rights under the Wagner Law. I would like to reiterate that statement, as some of you were apparently not fully clear yet on what your rights are."

Q. Did he refer that afternoon to the fact that since the first talk to the workers there had been a visit from some gentlemen?

Mr. Sklar: Mr. Examiner, I object to the type of the [573] question and any other type such as this, and say that they are leading the witness. Let the witness testify.

Trial Examiner Korey: I realize sometimes it is difficult to adduce testimony without leading. But, if you can help it, Mr. Mann, do not lead him too much. Let him gives the facts as he knows them.

Mr. Mann: All right; I am not trying to lead him.

Trial Examiner Korey: I realize that.

(The last question was read by the reporter.)

A. Mr. Sanford said, no doubt facetiously, "This morning we were visited by two very lovely young gentlemen, who purported to be representatives of yours. Whether they are or not, I am not able to say. No one has ever approached me from your shop, and it has us puzzled."

Q. (By Mr. Mann) Did Mr. Sanford, or any of the executives at that time, make any offer to the workers? A. Not at all, no. We discussed some things that we might do, but not on the offer. 1378

Q. When you say you discussed some things, you might do, you mean you discussed it among yourselves? A. Yes.

Q. Out loud? A. Out loud. And occasionally, just between ourselves. I would lean over and whisper to Sanford and Smylie would do the same.

[574] Q. How many workers were there at that time, on the afternoon of the 20th of July? A. I did not actually count them, but I would approximate fourteen.

Q. And where was this, where was this conference held, or this meeting, or whatever you choose to call it? A. It was in the office of Mr. Sanford, who shares it with the chairman of our board of directors. 1379

Q. What is his name? A. Mr. A. A. Scudder. In that room is a long table where we hold directors' meetings.

Q. And these twelve or fourteen workers were what, representatives from each department? A. There were girls and men picked at random. We considered them the most intelligent in our plant that could grasp what we were trying to say to them. We tried to get as many from each department, or floor, as we thought was advisable.

Q. What was then said; did you already testify what was said at that time about the Wagner Act? 1380

Mr. Graham: Could I have the last part of the last answer read?

(The last part of the last answer was read to Mr. Graham by the reporter.)

Q. (By Mr. Mann) Now, there has been some testimony here [575] that there was a paper drawn on or about that time which contained certain signatures. Do you recall that testimony? A. I do.

Q. And it has also been testified by some of the Board's witnesses that signatures on that paper were later erased. Do you recall that? A. I recall that.

Q. That paper has not been produced by the Board here as an exhibit. Do you know what happened to that paper? A. I do.

Q. Tell us. A. Eventually, it reached my hands. From where, I do not know. I looked at it and I saw that, but, there may have been two dozen names on it, to the left were eight or ten names, as a committee, and to the right were signatures of individual employees.

Many of them were scratched out, many on the other side scratched out.

So, I think—I concluded that it was a valueless document and tore it into a million pieces and threw it away.

Mr. Graham: What date was that?

The Witness: That was July 20th—no, wait, I withdraw that.

Mr. Mann: What is your question?

Mr. Graham: What date was that?

[576] Q. (By Mr. Mann) What date it was destroyed, if you know that. A. I could not give the exact day. It was two or one days later. It reached me through someone, someone else in the factory, and I looked it over and saw these names scratched out and I thought it was apparently nothing to keep and that nothing was to become of this and I tore it up.

Trial Examiner Korey: That would be July 22nd
1384 or 23rd, would it?

The Witness: I should say the 21st perhaps.

Q. (By Mr. Mann) Now, July 21, there was a letter received by your firm from the Regional Labor Board, signed by Mrs. Herrick, which is respondent's exhibit No. 3. Will you look at that, Mr. Healey, in the list of exhibits, and see whether you recall that letter? A. This letter dated July 21st, yes. (The witness examined the letter.) Yes, I recall that.

Q. (By Mr. Mann) That letter is dated the 21st? A. July
1385 21.

Q. Is it signed by Mrs. Herrick? A. Yes, as Regional Director.

Q. Mr. Sanford answered that letter, did he not? A. He did.

Q. And he answered thereto as respondent's exhibit No. 4. is that right? [577] A. That is right.

Q. Which is a letter dated July 22nd? A. Correct.

Q. I notice that you signed that letter, respondent's exhibit 4. A. That is right.

Q. Now, after you sent that letter, was there an appointment made whereby you were to meet with the representa-
1386 tives of either one of these unions at the Board on a later date?

Mr. Sklar: I object to the form of the question.

Mr. Mann: I still say that I call either one of these unions advisedly.

Mr. Sklar: You may call it what you please, but

do not characterize it in the record. Let the Trial Examiner find out for himself. 1387

Mr. Mann: There were two different names and I am insisting on the fact that is in evidence. You cannot say there is one union—

Trial Examiner Korey: Do not argue between yourselves. Let the record speak for itself on that.

Q. (By Mr. Mann) Was there an arrangement made whereby you were to meet at a later date? A. There was.

Q. What date was that finally arranged for? A. July 28, at 11:00 o'clock.

[578] Q. Were you there? A. We were. 1388

Q. When you say "we," whom do you mean? A. I mean, Mr. Sanford and myself.

Q. And who was there from the other side? A. Messrs. Galvin and Sklar.

Q. And there did you meet a gentleman by the name of Mr. McCann? A. We did.

Q. And he is an official connected with Mrs. Herrick's office, is that right? A. That is our understanding.

Q. You were ushered into his room? A. Yes, sir, after a brief wait in the anteroom, we were ushered in.

Q. Did you meet Mrs. Herrick on that date? A. Mrs. Herrick was not present. 1389

Q. All right; tell us what transpired and what was said between Mr. Galvin, Mr. Sklar, Mr. Sanford and yourself, and also Mr. McCann on that date, the 28th of July. A. Well, for one thing, we asked that Mr. McCann come out to the anteroom and meet us, which he did.

He asked us if we had any objection to discussing this with Sklar and Galvin. We said we would first like to have

a private talk with him to convince ourselves that these two
1390 [579] gentlemen were representatives of our employees. Before entering into any talk with them we would like to have a little assurance from someone that they really did represent the employees.

Q. That is what you said to Mr. McCann? A. We told that to Mr. McCann.

Q. Yes; go ahead. A. He said, "All right, then, let us step out awhile." Which they then obligingly retired to another room. Sanford and I then went into Mr. McCann's office. He invited us to have seats. He told us that he had, as I recall it, received a request from this Bakery & Con-
1391 fectionery Workers Union to hold a consent—hold an election. I do not know whether it was a consent election, in which event he asked us if we would be willing to agree to a consent election to determine whether or not they actually were the sole bargaining agents of our employees.

We said, before going into that, we would like to know if in his opinion these people did represent our employees. He said that he was convinced in his mind that they did.

So, another thing that occurred to us, if there was to be a consent election, would our foremen and forewomen be permitted to vote in the election.

Mr. McCann said "I will go out and consult with Galvin
1392 [580] and Sklar and see what they have to say about that."

So, he returned after a few minutes, saying that they objected strenuously to voting our foremen and forewomen, claiming that their union excluded from membership employees in a supervisory capacity.

We made the contention that while they were in a measure supervisory employees, they also pitched in and helped the

girls, did actual labor, the same type of work that the girls themselves did.

When a girl would leave the room for any reason—

Trial Examiner Korey: Mr. Healey, I do not like to interrupt you, but I will ask Mr. Mann to cut any part of this regarding consent elections out as much as possible. It is not part of the issue and it is only leading up to something else.

Mr. Mann: All right.

Q. (By Mr. Mann) You discussed that election business, then finally what happened? A. We finally agreed to waive any consent election. We said we were willing to accept Mr. McCann's say-so that these men did represent our employees. We would agree to confer with them at any time and place convenient to both sides.

Q. All right. Let me ask you this question, did Mr. Sklar and Mr. Galvin at that time, on the 28th of July, 1937, [581] in Mr. McCann's office, have any proof with them in the form of application blanks, original application blanks, original cards, or anything else which they were exhibiting at that time, either to you, to Mr. Sanford, or to Mr. McCann or any one of you gentlemen that they had the majority representation of the workers? A. They had nothing with them visible to us. What they did with Mr. McCann before we were there, I do not know.

As far as we were concerned, they produced no proof that they had any of our employees' signatures.

Q. Mr. McCann, outside of saying that he was convinced in his own mind that this union represented the majority of the employees, showed you nothing, did he? A. No, he did

not.

Q. How long did that conference last? A. Well, you might refer to it as several conferences, because later, Sklar and Galvin were excluded part of the time and then they came in and made the conference a five-man conference—I should think the thing lasted the better part of an hour.

As a matter of fact, it was that long, because five minutes of twelve we were preparing to go to lunch.

Q. Was a definite appointment then made in Mr. McCann's office as to when you would receive these representatives? A. There was.

[582] Q. What was the date of the appointment? A. The morning of July 29th.

Q. That is the following day? A. The following day.

Q. And on that morning did certain people come to your office? A. They did.

Q. Mention the names, please? A. Mr. Galvin, Mr. Anderson, Mr. Sklar, Mr. Picariello.

Q. What time did they get there? A. At 9:03 a. m.

Q. Wasn't that in the afternoon?

Mr. Sklar: That was in the afternoon.

The Witness: I said 9:—I mean, 2:03 p. m.

Q. (By Mr. Mann) 2:03 p. m.? A. Yes.

Q. I notice you mentioned very specifically—explain to the Examiner the reason that you are so sure of the time in this instance? A. Well, we felt that we were skating on some pretty thin ice in dealing with the gentlemen we had met on the 20th. We wanted to have our case on record so I was very particular as to time. I made a note of that. That is why I can say 2:03 p. m., was the time.

Q. All right. And they were ushered into Mr. Sanford's [583] office? A. They were. 1399

Q. And who was there on behalf of the company? A. Mr. Sanford, Mr. W. D. Carpentier, our vice president, Mr. C. A. Smylie—wait a minute, I might better count that. No, I withdraw that. Mr. Tompkins was not at that conference. Mr. Sanford, Mr. C. A. Smylie, myself, and my young secretary, a girl named Miss Harrington, I can say definitely Mr. Carpenfier was not at that meeting.

Q. Well, tell us what transpired there, Mr. Healey, on that afternoon? A. Mr. Galvin—

Q. By the way, before I ask you that, you testified before that when Galvin and Picariello had visited you on the 20th, they had left with you respondent's Exhibit No. 2, which is the demands of the union? A. Yes, that is right. 1400

Q. And, now, I ask you did you retain, did your company retain that paper in your possession from July 20th until this afternoon, on July 29th? A. We did.

Q. So, when they came out—and during that interval did you prepare a paper which was an answer to the demands which they left with you on the 20th?

By that, I refer to respondent's exhibit 2. [584] A. We did.

Q. Now, tell us what transpired that afternoon, and I would like you to give this very much in detail, telling us as best you can, according to your best recollection, who said it, what was said, and the substance of everything, according to your best recollection. A. The first thing we did was to exchange introductions. We had never met Mr. Anderson before. Sanford and I had met Mr. Sklar, but Mr. Smylie had not. 1401

Q. The only one you had not met before was Mr. Anderson, is that right? A. Yes.

Q. All right, go ahead. A. We shook hands and then we
3402 exchanged introductions and we advised them to sit at a table that we use as a directors' table.

Q. Can you tell us how they all sat, their positions? A. To the best of my recollection, Mr. Sanford sat—well, we will use that table over there (referring to the table in the court-room) as an almost identical set-up.

Mr. Sanford sat at a desk that is in the same relative position as this one (indicating). The directors' table is about as that one is, only sort of cater-cornered. Mr. Sanford sat where Mr. Mann is sitting now, at the end of the table.

[585] Right next to him sat Mr. Galvin. As I recall it—
3403 yes, next to him sat Mr. Anderson. Next to him sat Mr. Sklar. At the extreme end of that side of the table, Mr. Picariello, I was at the other end of the table.

To my right sat Mr. Smylie, occupying that entire side of the table, except down by the foot, that was perhaps where I took up the space with a copy of this paper that Mr. Sanford had.

Q. That is respondent's exhibit 2? A. No, Mr. Sanford's answer to respondent's exhibit 2.

Q. All right. A. I had that in my hand and it took up the middle part of the table and Mr. Smylie occupied the other end of the table.

3404 Q. Go ahead. A. Mr. Galvin said, "You, of course, know that we are here to bargain with you, Mr. Sanford. As you promised Mr. McCann, do you recognize us as the sole bargaining agency for your employees?"

Mr. Sanford said, "I do, at the same time realizing that you do not represent all of our employees."

Mr. Galvin said, "You know the conditions of the Wagner Law."

Mr. Sanford said, "Yes, and I also told you just a minute ago, we do recognize you as the sole bargaining [586] agency for our employees. But, I would like to say that I know that you do not represent all of our employees."

Galvin said, "That is not necessary. You must know the law."

Sanford said, "We realize it is not necessary, as I told Mr. McCann yesterday, knowing that we still recognize you as sole collective bargaining agents for our employees."

At that point, Mr. Sklar took exception to some remark that Galvin made, that had been made at the previous meeting. I said that, "How do you know, Mr. Sklar, you were not present at that meeting?"

Whereupon he withdrew within his shell and said no more on the subject.

Mr. Sanford said, "Now, we have read and digested these demands you presented to me on July 20th and a study of them indicates to us that you have no knowledge whatever of the confectionery business and in particular our own business, which is a line of penny goods."

Galvin then said, "Mr. Sanford, I did not come here to be read a lecture."

Sanford said, "I am not trying to read you a lecture, I am simply saying that our examination of these demands of yours convince us that you know nothing of the problems of our industry as a whole, ours in particular, or that you have made no attempt to get a vivid picture of conditions [587] in the candy game."

Galvin said, "As I repeat, we did not come here to be read a lecture to."

Mr. Sanford said, "Well, we just say that in passing, and I will go on; so there will be no future misunderstanding, Mr.

Galvin, I will take your paragraphs from the prepared copy
408 that I have before me, I will take them one by one, we can have a discussion at the end of each one."

Galvin said, "That is not the way we usually do business."

Mr. Sanford, "I do not know about that, but we feel for our own protection I should follow this procedure."

Well, Mr. Galvin apparently reluctantly consented.

Mr. Sanford took this prepared paper and covered every paragraph in the demands that had been left with us on July 20th, read each paragraph and at the end of the paragraph there was a general discussion.

Q. (By Mr. Mann) Now, in order to give the Examiner
409 a very clear picture of how this was done, I will ask you now to turn to respondent's exhibit No. 2 and go over each of these paragraphs and state what was said, by whom, what the counter proposition was, by whom it was said, and give the Examiner the entire picture of what took place there on the afternoon of July 29th. A. We took paragraph 1, that is in here, and I won't bother [588] reading it, or shall I?

Trial Examiner Korey: No, do not read it.

Q. (By Mr. Mann) That paragraph simply relates to what?
A. The union being sole collective bargaining agency for
410 all of the employees of the company who are not in an office or supervisory capacity.

Mr. Sanford said at that point, "We, as we told Mr. McCann, have agreed to bargain with you for our employees, but, as I said before, we do not—we do it with the knowledge that you do not represent all the employees of the company."

Q. Let me ask you this question right here, although you had agreed with Mr. McCann on the day before that you

would recognize them as the sole collective bargaining agency, because of Mr. McCann's statement, did you even as late as July 29th have any written proof of how many of your workers they represented? A. At no time did we have any proof at all, but the bare statement by Galvin and his associates that they represented 51 per cent of our employees.

Q. All right; go ahead. A. As I say, we agreed to recognize them although we had no legal proof that they did.

No. 2, we said in reply to No. 2—

Q. What does 2 refer to in respondent's exhibit No. 2? [589] A. 2 refers to what might be termed a closed shop, that we would employ no one outside the union or no members not in good standing in the union.

Q. What was said about that? A. We said it has always been the policy of our company, to maintain an open shop. We feel that no employee of ours who wants to work should be forced to pay tribute for his position. We consider this an old American custom and we see no reason why an employee of ours should be forced, as a condition of employment, to pay tribute or dues into a union to get his job with us.

At that point, Mr. Galvin said, "Mr. Sanford, that is something I have heard so often. Those words are reminiscent, I see nothing strange about that," is what the answer was. That is a truism.

Q. When you say you came in— A. I came into the conversation at that point. I said, "Mr. Galvin, there is nothing strange about that. You have undoubtedly heard it before. It is a truism."

Anderson said, "That is an awfully good word. I had not heard it before."

Later Galvin adopted it as his own, but then we went on.

414 Well, we will let that slide awhile.

Q. Did Mr. Sanford say anything in that conversation as to whether the Wagner Act required an employer to have a closed [590] shop? A. It did require—our understanding of the Wagner law was that that was not a requirement of the law.

No. 3. Wages for all male employees being 30 cents an hour. He said after reading that paragraph, "as I said before, Mr. Galvin, and as you said before, when you presented the demands to me, 'we did not expect you to sign this agreement when we came in,' a man that signs an agreement like

415 that would be crazy."

Q. Who said that? A. Galvin.

Q. Wait a minute; I do not think the Examiner gets that.

Trial Examiner Korey: I get that.

The Witness: Galvin said, "We did not expect you to take these demands. We have enough experience as union workers to know we could not walk into an office, lay demands on the desk, and have them accepted. This is just the basis for bargaining." With that understanding, we continued.

It was preposterous to think—

416

Q. (By Mr. Mann) Tell us who said those things. A. Mr. Sanford said it was preposterous to think that we could give the male employees an increase of 30 cents an hour. If the union officials had a knowledge of the candy business and in particular our own business they would not [591] present such a demand that no reasonable company could be expected to meet.

Q. What was the present wage scale? What was the wage scale at that time, July 29th? A. $14.00 a week. 141

Trial Examiner Korey: By the week?

The Witness: Well, we pay—we base it on a five day week.

Q. (By Mr. Mann) Can you give us the hourly rate? A. Not without refreshing my mind as to the figures. I can have them later in the day, if you care for them.

Q. Wait a minute, let us see if we can get this clear. All workers do not get the same hourly rate there, do they? A. Not all workers, no. 141

Q. Do all male workers get the same hourly rate? A. No, they do not.

Q. Do all female workers get the same hourly rate? A. No.

Q. Was anything said about that at that time? A. About our—

Q. About the male employees, first. A. Well, the only thing that was said at that point was that this demand was so ridiculous and out of line, 30 cents an hour increase over the present rates, that Mr. Galvin must have known when he presented it to us that we could not possibly meet a demand such as that.

Q. [592] 30 cents an hour would be how much a day? A. An increase, that is an 8 hour day, would be $2.40 per day. 141

Q. On a five day week that would be $12 a week? A. That is right, $12. That was an increase over the present scale.

Q. Would that be nearly double what they were getting before? A. Just about.

Q. O. K. How about a female worker? A. The wages of all female workers are on an hourly basis, to be increased 15 cents per hour over their present wages.

Mr. Sanford said, "If we were manufacturing automobiles,
420 or something that we could pass some of this increase on, a demand such as that might be met, but we could not come even close to that and still manufacture a line of penny candies."

Right there, Galvin said, "Well, Mr. Sanford, you are reading off a piece of paper and you are not giving us any definite answers to any of these questions."

Mr. Sanford said, "When I conclude with all of your paragraphs, I will give you our counter proposals. There is no use of taking them all now. Let us go down the line with all of them. I would like to explain each paragraph to you,
421 why it is impossible for us to meet them as they are. When [593] I get through with all of this, I have here our counter offers to every one of them."

So that seemed to be satisfactory to Mr. Galvin and we proceeded along those lines.

Q. (By Mr. Mann) All right. A. The rate of all piecework operations shall be increased 50 per cent over the present rate for such piecework operations.

Q. That is the demand? A. Yes, that is the demand.

Mr. Sanford contended that any increase of that kind would mean that we could no longer employ pieceworkers.

Galvin said, "All right, let us hear the next paragraph."

422 Q. While you are testifying, you are reading from respondent's exhibit No. 2? A. Yes, I am reading from respondent's exhibit 2.

Q. Go ahead. A. Well, they went on to—before we go on, I would like to comment further on this particular paragraph.

Q. Oh, yes, go ahead. A. Anderson then said, "Well, if 50 per cent is too much, what do you consider a fair amount?"

Mr. Sanford then said, "We will take that up when I come to the end; to the answers to each one of these paragraphs." 142

[594] I go on to D. No employees shall be transferred—

Q. When you say "D", you mean paragraph 3-D? A. Yes, it relates to transferring workers from a piecework to an hourly basis. We could not do that without the consent of the union.

Mr. Sanford explained our process of manufacturing as best he could.

Q. What did he say about that? A. He said it would be impractical, the way our workers are—the way the work is laid out in the day,—a batch cooked in the night, and sent upstairs, we would have to take girls off after it was run out, 142 they might complete it in an hour or two, we would have to lay them off and put them off for the day, and rather than do that, we put them back on another basis.

It would not be practical. The girls would suffer.

Q. In what respect would they suffer? A. In the loss of time. If they were on a piecework basis, and we could not use them on a weekly basis, it would mean when we came to that day—to that stage where we had to stop operations, we would have to lay them off for the day. As it is now, they can step from one to the other and not lose any time.

Q. This is all that Mr. Sanford said? [595] A. Mr. Sanford's explanation of why it was not possible for us to meet 142 this demand.

Q. All right. A. He—

Q. Is this 3-E you are going to now? A. Yes, 3-E, relating to guarantee of employment on an hourly rate of 50 cents.

Well, we pointed out there that we could not guarantee, as we had explained in the discussion of the previous paragraph, that anyone could have a whole day's work.

There comes a stage in operations there in that particular
426 job, where that particular job is done and such a guarantee would be unworkable, could not be done.

In guaranteeing them 15 cents an hour on certain types of work, they did, would be ridiculous.

Q. Is that what Mr. Sanford said? A. What is that?

Q. Is that what he said, Mr. Sanford? A. That was Mr. Sanford's statement.

Galvin, who acted as chief spokesman for the group, said, "Well, continue from your paper. This is something unusual for me. I have never seen it done this way."

I spoke up and said, "You may not, but we felt it was neces-
427 sary for us to proceed in this fashion so there would be no question as to an item that might arise later as to [596] whether we did come to terms with them.

Q. You are now referring next to four, of respondent's exhibit 2? A. Yes.

Q. What does that relate to? A. A, this relates to the hours of work, being 8 hours a day, with a lunch period of half an hour. We said that that was practically the arrangement we had been working under for years and that was immaterial.

The hours of work was immaterial to us. Galvin said, "It is immaterial to us, too."

428 Q. When you use the word "immaterial," what do you mean by that? A. It was not of vital importance to us.

Q. You mean it was not a point that had to be discussed? A. It was not a point that had to be argued or discussed or bargained on.

Q. For the reason why? A. For the reason we had already had that arrangement. There was no sense in discussing that at any length.

Q. Was that talked about at that conference? A. That was the very nature of the talk. 142

Q. I see. However—do you ever work on holidays and Sundays? A. Occasionally it is necessary. Not to work on Sundays, [597] but to work on Saturdays. When we find ourselves behind in our orders, we occasionally open the factory on Saturday.

Q. Well, I asked you about Sundays and holidays. Do you ever work on Sundays and holidays? A. We have worked on some holidays that are not considered legal holidays, like Armistice Day, or Columbus Day, but the major holidays we are closed.

Q. You never worked on Sundays? A. Never worked on Sundays. 143

Q. Prior to July 29, when you worked your plant on certain holidays, did you pay double time? A. No, we did not.

Q. And when you said that you would pay double time for holidays, did you mean that if you did work on holidays, you would be inclined to pay double time?

Mr. Graham: I object. I do not know where the witness made that statement.

Q. (By Mr. Mann) Tell us all that you said about that, Mr. Healey? 143

Mr. Graham: Is this paragraph 4-A?

The Witness: Yes; the hours should be 8 hours a day, with a lunch period. We said that substantially was the basis on which we were working and—

Q. (By Mr. Mann) Were the holidays—were they dis-
432 cussed? A. The holidays were discussed.

[598] Q. What were the holidays that were discussed, I mean, the specific holidays? A. All holidays were discussed.

Q. Were they mentioned by name? A. No, they get all legal holidays.

Q. All right. Legal holidays? A. Yes.

Mr. Graham: Is that in 4-A?

The Witness: 4-A relates to the hours, should be 8 hours a day with a lunch period.

4-D refers to Sundays and legal holidays.

433

Q. (By Mr. Mann) All right, go ahead. A. 4-B relates to five days a week, Monday to Friday, inclusive.

We told them in connection with that, that five days a week of 8 hours a day was our regular week. On occasion, we found it necessary to work on a Saturday, or a holiday, not one of the generally recognized holidays, like Christmas or New Years, but some of the holidays such as Columbus Day, or Armistice Day.

On occasion, we found it quite necessary to work on such days.

Galvin said, "If you do find it necessary to work on those
434 days, what rate of pay will you pay your employees?"

Mr. Sanford replied that that would be something that [599] we would have to get out our pencils and papers for and figure a little more on, that we felt that we might be able to make concessions for extra time, work out some workable basis where if they were left off, or if they—I will say that differently.

As I said before, we have seasonal work. There are periods

of the year where it is slack and we find it necessary to lay them off.

If we could work out some arrangement whereby they would get straight time for a certain number of overtime hours, we might be able to give them an increase over the straight time that they were getting.

So Galvin said, no.

So Sanford went on to his next paragraph.

All work on Sundays and legal holidays shall be paid for at the rate of double time.

I might say that that answer of mine was on C and D.

E, all employees scheduled for work shall be guaranteed at least eight hours of work a day per schedule.

He repeated something he had said earlier in the conference, that the way we lay out our work made it impossible for us to guarantee any eight hour work day, guarantee that they would be paid for eight hours.

As we might finish up a batch, if you come in at eight o'clock, we might be finished up at eleven o'clock. We might [600] find it physically impossible to put them to work and there would be no sense just having them stand around or put them on menial tasks that we would have to put them on.

Galvin's reply to that statement of Sanford's was, "Proceed."

Paragraph 5 pertains to all present employees of the company having more than one year's service shall receive two weeks' vacation with pay.

Q. (By Mr. Mann) You are now reading from paragraph 5, respondent's exhibit No. 2? A. Yes.

We said that that would be impossible, definitely impos-

sible. We might and probably would be willing to give them one week's vacation.

Q. With pay? A. With pay, but as for two, that demand would be considered out of line and something that we could not find it possible to meet.

Q. Did he say, or did anybody say, the reason that you could not give them two weeks' vacation with pay? A. For one thing, it would cost too much. We had figured up the cost when we took the paragraph, and tried to see if we could meet it. We had figured our cost and found that the outlay for our employees would be so much that we could not grant it, and maintain our then scale of prices. But, [601] we did feel that our employees were entitled to some vacation and we were willing to offer Galvin and his associates one week's vacation.

Q. What did they say about that? A. We would discuss that later.

Q. That is what they said? A. Galvin said that.

Q. All right. A. 6, relates to slack—that is, 6-A, I should say, all the present employees of the company shall divide the available employment equally among themselves on a departmental basis.

Sanford said at this point that we were opposed to that method of doing business.

Q. Is that paragraph known as the share-the-work method? A. Share-the-work method is what it is commonly known as, yes.

This had never been worked out.

Q. Who said that? A. Sanford. It had never worked out satisfactorily, and we figured that it was unfair to the better workers in the plant, the more efficient workers. It meant that they were penalized by sharing work with less efficient help, and we considered it un-American.

Q. Is that what Mr. Sanford said? [602] A. Mr. Sanford said that.

1441

I will go on to say that he said that leading economists, practically all leading economists agree with us in that contention.

Anderson then said, "I wish you would name me a few of those leading economists that say that."

"I have a very extensive library at home of books by economists and I cannot recall reading one authority on the subject that would say that the share-the-work policy was not a sound economic policy."

I believe Sklar, or perhaps it was Galvin, then said, "Well, that is an academic question. We will skip over that and go on."

1442

6-B, overtime and holiday work, if anybody shall be—that is, if any, shall be divided equally among all employees on a departmental basis, that is also part of the share-the-work program that we considered poor economics.

Q. Did you say that? A. Mr. Sanford said that.

6-C, that we did not consider those two paragraphs were workable—

Q. When you say two paragraphs, you mean, subdivisions? A. Subdivisions of paragraph 6, as we did not consider them workable, that would answer their demand that a chart be posted in a conspicuous place.

1443

[603] 7-A, that all new employees of the company shall make application in—make application for membership in the union after a trial period of one week.

We covered that in the paragraph relating to the closed shop, said Mr. Sanford. And we would not consider a closed shop, so we would not make as a condition of employment

that a new employee become a member of the union or pay
144 tribute to a union to secure employment with us.

Galvin said, "What else have you to say on that subject?" That states our position fully.

Paragraph B, new employees on a piecework basis shall be paid the prevailing rates per unit except that during the first month of employment they should be guaranteed wages at the rate of 40 cents per hour.

Mr. Sanford said, "Mr. Galvin, it is again apparent from this paragraph that you are not familiar with the problems of the confectionery manufacturing business, technically as they relate to penny products. We have had girls in our
145 plant that were so inefficient that during the trial period if we agreed to give them 40 cents an hour, we would find ourselves with a shifting turn-over of help that would make it impossible to conduct an efficiently run plant."

Galvin said, "We will go on."

No female employees placed on an hour—that is, with no previous experience with the company, should receiving [604] the following rates—listing them, first month, 40 cents an hour, second month, etc.

"Mr. Galvin, you had better make some further study of candy manufacturers' problems."

Q. Mr. Sanford said that? A. Yes.

146 Mr. Galvin said, "You better make—" he said to Mr. Galvin, "You better make a further study of the candy manufacturers' problems and present some scale of rates or a new scale of rates for new employees that would be possible for a reasonable company to make."

He repeated that before.

D—

Q. D, in what paragraph? A. D, in paragraph 7. "The same thing applies to that paragraph, Mr. Galvin," said Mr. Sanford. 1447

"All right, proceed," was Galvin's reply.

8-a, a delegate for each department whose duty it shall be to attempt the adjustment of any grievance therein shall be appointed by the union.

"We had no objections," said Mr. Sanford, to dealing with any delegates or committees that our employees or you, the union, may designate, to deal with us. We always have had an open office that our employees can see us in, either directly or through one of their duly elected representatives.

[695] A shop committee shall be appointed by the union, Section B of paragraph 8, shall meet with the manager wherever necessary to aid in the proper adjustment of any grievances. 1448

"Well" said Mr. Sanford, "that is covered by the answer I just gave you, Mr. Galvin."

C, of that same paragraph, "An official representative of the union must be permitted to visit this shop at any time after notice to the manager or foreman."

Mr. Sanford said, "Gentlemen, we have in our plant some very secret machinery. We have had a standing rule of many, many years that no one outside of an employee shall visit the plant, and for that reason we would not care to have incorporated in any contract we write with you that a shop committee, or an official—or an official representative of the union can be permitted to visit the shop at any time. 1449

We feel that we would be taking risks in allowing any representative of any organization to come in and inspect our plant.

Then Mr. Galvin said, "Why, Mr. Sanford, bigger and
50 better houses than yours have allowed us to go in. I could refer to the National Biscuit Company. They have machines that no doubt are more secret than yours. They can tell you that we have never violated a confidence."

[606] Mr. Sanford said, "That may be quite true of you, Mr. Galvin, but it does not say that you will come in our plant and inspect—or can be brought in to visit the shop. Any of your underlings may come in, according to that paragraph, and we do not know that they would have the high code of ethics that you may have adopted as yours."

He said, "Well, I can tell you this, it is a labor practice
51 and I do not believe I ever heard of a labor leader that violated such a confidence."

"Well," Mr. Sanford said, "I do not want to put myself into any position where a labor leader could violate such a confidence."

Mr. Sklar then said that since he had been following labor matters, he has never heard one instance of one labor leader, delegate or anyone connected with a union violating a confidence reposed in them.

We said that that was our long-standing policy and we would need a great deal of persuasion to deviate from that policy.

52 Galvin said, "Continue."

Q. Did not Mr. Sanford at that time say that the union might present its cases to the management at the office? A. Yes, that was mentioned. He could see no necessity for a union representative going through the plant. Our offices, "as I said before," he said, was open at all times to [607] any representative of our employees. He saw no particular reason, no particular thing to be gained by having a representative of the union go through the plant.

Q. And then— A. Just a minute, I had not finished with that. Mr. Sanford then spoke up and said—Mr. Anderson 1453
said that in many cases that he had known of there were complaints registered with the union by various employees. They said that the people in the shop would come to them and say certain conditions existed. He said that he would have to take their word, he would go to the employer and the employer would say, such and such is not the case.

He said, then, that it was a case of the veracity of the employees, their members, or the employer and naturally he would be inclined to believe the employee in preference to the employer.

And by agreeing to let their representatives go through 1454
the plant, we would insure ourselves of unjust claims of poor conditions existing in the plant.

That was his contribution to that particular paragraph.

We still continued to insist that it would violate a long-established practice and we would need considerable persuasion to change our stand on that particular subdivision of paragraph 8.

Q. By the way, you referred in your answer just now to a [608] statement which you say was made at that conference whereby it was recorded by Mr. Sanford that he had some very secret machinery there. Is that what was said? A. That 1455
is right.

Q. Just elaborate on that a little further. What secret machinery is there? A. Well, practically all the machines that we use in our business have been designed by our officials or engineers. They have never been patented for the reason that if they were, they would be available to anyone. They are types of machinery that we use, ourselves, no one, so far as we know has ever copied them.

One—on some of them they have turned out machines similar, but we have perfections in the machines that other competitors, I am reasonably sure, have not.

We, of necessity, have to jealously guard these secrets of these machines.

Q. All right. A. Paragraph 9. The company, by arrangement with the union, may print union labels on its wrappers without cost and may affix to all of their products at a charge of 15 cents.

Q. That paragraph was read and discussed? A. Yes, it was read and discussed. Mr. Sanford,—

Trial Examiner Korey: Fifteen cents for what?

[609] The Witness: For the union label.

Trial Examiner Korey: For how many?

The Witness: For one thousand, I believe; yes, one thousand. That was immaterial to us.

Q. (By Mr. Mann) Would you say by that— A. We might or might not agree to that paragraph. Whether a Union label was on there made no difference to us.

Q. You mean Mr. Sanford said that he was perfectly willing to have it on or it could go off? A. That was something that would develop at a later conference. We might or might not want it. That could be developed later.

Q. I see. Paragraph 10. A. The company shall not discharge any employes without previous discussion and notice with an official representative of the Union.

There was quite a little discussion on that.

We have always held that we had the inalienable right to discharge any employe.

Q. Is that what Mr. Sanford told the representatives? A. That is what he said to them.

Without consulting anyone from the outside. But, if we were convinced that the Union was a fair one, we might be willing to waive—and agree to this paragraph 10, that after considering all the other paragraphs was relatively [610] unimportant.

Q. What is number 11? A. It relates to the arbitration by a committee on one thing and another.

Q. What was said about that? A. That was, so far as we were concerned, said Sanford, "If we can come to a workable agreement on the other paragraphs we see no objection to anything in there."

Mr. Graham: Who said that?

The Witness: Mr. Sanford.

A. As to paragraph 12, the duration of the contract, that was another comparatively immaterial clause and we would, no doubt, come to some satisfactory agreement on that particular paragraph.

Q. And, there were 12 paragraphs in Respondent's Exhibit 2, is that right? A. That is right.

Q. And each one was taken up and read and discussed, as you have just indicated, in your testimony now, is that true? A. That is right.

Q. Now, you said before that these gentlemen came in at 3 minutes of two. A. That is exactly the time.

Q. On the afternoon of July 29th? [611] A. That is exactly the time.

Q. Can you now tell us what time they left? A. They left at 4:18.

Q. P. M. or A. M.? A. P. M.

1462 Q. In fact, you made at note of it at that time? A. I made a note.

Q. Now, during this time there was some talk on the part—there was some testimony on the part of the Board's witnesses, I think, Mr. Galvin and Mr. Anderson particularly, wherein they said for the period of time that they were there, they spent some time in the back of the room, in the back of the plant, or in one of the rear portions of the plant. A. That is correct.

Q. Is that true? A. Yes.

Q. And just tell us how long, how much time was con-

1463 sumed while the people—while the representatives were in another part of the plant, not in the conference room where most of the time was taken up. A. Why, I might answer that by saying that the conferences continued in another part of the plant, in the office. That—

Q. By that you mean that when they went to another part [612] of the office you all went there, is that right? A. All but me. The others all went in the rear, and I might say that Miss Harrington stayed in the office with me. I had some things to attend to.

Mr. Sanford, Mr. Galvin, Picariello, Mr. Anderson and Mr. Sklar continued to the back of the office where they could

1464 get a better line on the products that we manufactured.

We had a sample case back there that they looked over.

Q. That is the main floor? A. It is on the main floor. It is a continuation of the office.

Q. Yes. A. We wanted to show them the line we manufactured. Mr. Sanford, at the same time, was showing various ledger accounts to Mr. Galvin. We were discussing the

impossibility of going over certain resale prices—all selling prices.

1465

Mr. Sklar: If Mr. Healey was not present, how can he testify as to what happened at that time?

Mr. Mann: What did you say?

Mr. Sklar: Mr. Healey said he was not present.

The Witness: I will qualify that. I was not present all the time, Mr. Sklar. We have a water cooler adjoining the sample case, and I went back there and I heard extracts [613] of the conversation.

I would not attempt to repeat the entire conversation, but I had occasion to get the telephone calls and all that sort of thing.

1466

Trial Examiner Korey: Tell us about how long all that took.

The Witness: That took exactly 21 minutes, which is another time that I copied down.

Q. (By Mr. Mann) From the time they left? A. From the time they left the inner office, the President's sanctum, until they returned to it, they took exactly 21 minutes to do it.

Q. And at that end of that time did they come back again into the conference room? A. They did.

Q. In other words that 21 minutes elapsed between—during the time that they first came in and during and up to the time that they went out? Is that correct? A. That is correct.

1467

Q. After that 21 minutes, do you know just how long it was that they continued talking in the President's office when they came back, approximately? A. I did not split the conference up into hours. We considered it part of the first

conversation. I just wanted a record for myself of how long
1468 I was out of the conference.

[614] Q. So according— A. So I could not say what part of the conference this little adjournment—I would not say adjournment, but adjournment to the other room.

Q. So from 2:03 to 4:18 is exactly two hours and 15 minutes, is that it? A. That is it.

Q. That is the length of time that the entire conference with Mr. Galvin and Picariello, Anderson and Sklar lasted on July 29th? A. That is right.

Q. Now, after you were all through going over these demands, what was the next thing that happened? A. Mr.
1469 Galvin—

Q. As they were about to leave. A. As they were about to leave?

Q. Yes. A. Well, we had not come to Mr. Sanford's reading of our counter proposals.

Q. All right. Now tell us about that. A. After he had finished with his resume of that proposal and our objections and reasons for not being able to agree to them, he said, "Now, gentlemen, these are as close as we can come to meeting your demands as we see it now."

"I will take these paragraph by paragraph," and he [615] read the paragraph again and then said, "This is our counter
1470 proposal." To guide myself, I will refer to Exhibit 2 again, to refresh my mind.

"As I said earlier in the meeting, we will not recognize that condition of employment as a membership in the Union or a tribute paid to any Union.

"This wage scale that your Union has presented to us—"

Mr. Graham: What paragraph are you referring to?

The Witness: We go on to 3. The first one was 2. If you want to take each one of them, that the Union is a collective bargaining agency. We agreed to that in the presence of Mr. McCann, and when you came into our office we also agreed, so there is no comment necessary on that one. 1471

Number 2 I have just told that we did not consider a closed shop a desirable thing.

Three, these various weights—as you, by your own admission, Mr. Galvin, admitted were only submitted to us as a basis for bargaining.

You said yourself that there was something that you never expected us to sit down and sign our names to. You just presented them as a basis for bargaining. 1472

Now, we cannot offer any such ridiculous rates and as we see it now a 5% increase to all employes, with some other minor adjustments, adjusting inequalities, is about [616] the best we can do in the way of salary adjustments.

That is to say, wage adjustments, I should say, rather than salary adjustments.

Q. (By Mr. Mann) You are now telling us what Mr. Sanford said? A. What Mr. Sanford was offering them as against their demands, taking it paragraph by paragraph. 1473

He then said, in relation to paragraph 4, that as we had said before, we had an eight-hour day and we perhaps could make any arrangement concerning the period of working hours that were satisfactory to the Union.

That was something that we considered relatively unimportant after considering all the other paragraphs as being terribly important to meet, which we could not continue to do business with.

But, after considering all those paragraphs, paragraph 4,
1474 as to hours, we probably could get together on a satisfactory arrangement which would be agreeable to the Union.

The five-day week, Monday to Friday, inclusive, we would like to have the privilege of working Saturdays if on occasion it were found necessary.

We did not expect to make it a regular practice, but there were times when we found it expedient to run the factory on Saturday.

As for double pay for holidays, that, too, was [617] preposterous for the penny line of candies. We perhaps would be willing to meet them part of the way on that particular
1475 course, but, as a matter of fact, we did feel that some arrangement should be made whereby if they had to work any extensive time on overtime, they should get a little more than they were getting, and that this we were sure, could be amicably adjusted.

He went on to speak about guaranteeing at least eight hours of work, and he said, "as we discussed at the end of the reading of your demands, that is impossible.

"Now, when I read your demands we also discussed," said Mr. Sanford, "a two-weeks' vacation with pay. We have taken on a pencil sharpener and concluded that that would be quite impossible and we are prepared, however, to offer you,
1476 Mr. Galvin, to present to your members, our employes, a week's vacation with full pay.

"It is our prayer that this is found to be a workable arrangement and satisfactory, to close our plant probably for one week, so that they can all have this one week's vacation at one time."

He continued then—

Q. When you say he, you mean Mr. Sanford? A. That is what I mean.

Q. The record has to show it. A. Mr. Sanford continued that as he had said when [618] discussing paragraph 6a previously in the meeting, we did not approve of share-the-work method. He repeated and grinned, looking over at Mr. Sanford, despite Mr. Sanford—Mr. Anderson's skepticism he believed that no economists agreed with that, that it was a poor piece of economics. 1477

That covered the whole of paragraph 6, that answer.

Paragraph 7, Mr. Sanford said that we would never consider the membership in a Union as being a requirement to work with us.

That had been discussed in reference to the first paragraph—the second paragraph relating to a closed shop, and the same answer applies here, that we did not approve of making employes pay tribute for a position with us. 1477

He said, in relation to paragraph—I mean sub-section b, paragraph 7, substantially the same as he had spoken in his previous comments on this paragraph course, that inefficient workers would make it impossible to adopt any such rate or guarantee of wage.

However, he went on to say, we were sure that when Mr. Galvin, Anderson, et al., were to go back and try to arrive at a workable solution, they would probably present to us demands that were more in line with the manufacturing problems that we have to contend with. 1477

"With that," he said, "I will pass on to the next paragraph."

[619] Q. Who said that? A. Mr. Sanford, "With that," he said, "I will pass on to the next paragraph which relates to a delegate from each department."

He said, "We have gone into that subject quite thoroughly; there is nothing to be gained by repeating it. We consider

that our machinery is so fixed that we feel we would be—I would be unfair to my board of directors if I allowed or agreed to allow any representative of the Union to come into our plant.

As for the Union label—which is paragraph—

Q. Which is paragraph what? A. Which is paragraph 9; Mr. Sanford said, "As I have said before, it is immaterial, and paragraph 10, I feel confident—

Q. Mr. Sanford said that? A. Mr. Sanford said that—"I feel confident we can work out some satisfactory adjustment on this particular demand."

"As far as paragraph 11 is concerned, it seems to be fair in every respect. I believe we could arrive at a satisfactory conclusion concerning this particular paragraph.

"The same applies to paragraph 12, that, too, we should be able to arrive at some solution."

[620] Q. So, Mr. Healy, there were certain paragraphs that you considered to be acceptable, there were other paragraphs that you considered definitely unacceptable, and there were certain paragraphs which you left open for further discussion, is that right? A. That is correct.

Q. Does that, Mr. Healy, summarize it properly? A. That is correct.

Q. And at 4:18, when they left, when I say they I mean these gentlemen from the Union, what was the last thing that was said? A. Mr. Sanford said, "Well, gentlemen, we have had a very interesting session this afternoon and I hope that you will go back, as I suggested, and prepare some demands that will be reasonable which the company can accept."

Galvin mumbled something that none of us caught, and said, "Well, gentlemen, you shall hear from us again."

Q. And with that he went out? A. With that he closed the door.

I might add that during the conference a box of candy was prepared for Mr. Anderson and I went out to try to get them, but he seemed to be in such a hurry, wherever he was going, that he did not stop to wait for it.

It is a shame that he did not wait for it.

Trial Examiner Korey: I think at this point we will [621] adjourn until two o'clock.

(Thereupon, at 1:00 o'clock P. M., a recess was taken until 2:00 o'clock P. M.)

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[622] AFTER RECESS

(Whereupon, the hearing was resumed, pursuant to recess, at 2:00 o'clock P. M.)

Trial Examiner Korey: We will resume the hearing.

WALTER J. HEALEY resumed the stand as a witness by and on behalf of the Respondent, having been previously duly sworn, testified further as follows:

Direct Examination (Continued):

Q. (By Mr. Mann) Did you hear from Mr. Galvin again? A. Not from Mr. Galvin, no.

Q. Did you hear from anybody again? A. We did.

Q. When and from who? A. On the morning of August 2nd, about 10:00 o'clock we had a telephone call from Mr. Anderson, Vice President of the Union.

Q. Tell us what he said. A. He inquired about—if we were—

Mr. Sklar: Just a moment, did he speak with you, Mr. Healey?

The Witness: No.

Mr. Sklar: Then I object to his testimony.

The Witness: I was alongside Sanford during the telephone conversation.

[623] Mr. Sklar: You can say what Mr. Sanford said.

The Witness: All right. I heard him say, "Oh, Mr. Anderson, yes."

"Oh, Mr. Anderson," well, as well as you could hear a one-sided conversation, "What day is most convenient to you?"

Trial Examiner Korey: Tell us in sequence what Mr. Sanford told you was the gist of that conversation.

The Witness: After he hung up?

Trial Examiner Korey: Yes.

The Witness: I could hear one side of the conversation, as I say.

Sanford told me that Anderson asked him when we would have another conference to continue the bargaining we had done at the July 29th meeting.

Anderson suggested that day, I believe, the next day. Mr. Sanford that prior engagements made it impossible that day or the next day, but that on

August 5 he was free and would be very glad to have Mr. Galvin and his associates come in and continue where we had left off. 1481

Q. (By Mr. Mann) Did he fix an hour on August 5? A. He fixed the hour of 10:30, I believe, on Thursday, August 5

Mr. Anderson said that he wished they could make it sooner. And Mr. Sanford said, "Well, we expect some people [624] from Europe and we have prior engagements, and it would make it very awkward and inconvenient to meet before Thursday."

"I will be glad to meet you and your associates at 10:30 of Thursday, August 5." 1491

Anderson said, "Well, if we cannot get together before then, that date will be satisfactory."

Whereupon, the telephone was hung up and it stood as of August 5, at 10:30 o'clock that morning.

Q. (By Mr. Mann) Did you fix the time of that telephone call? Did you fix it in your answer here? A. Yes, it was shortly after 10 in the morning. Some place between 10 and 10:30, or approximately that.

Trial Examiner Korey: About 10:30 o'clock?

The Witness: About 10 o'clock.

1495

Q. (By Mr. Mann) Now, was there ever another meeting between your company and these representatives on August 5, at 10:30 A. M.? A. No, that never materialized.

Q. After that telephone call at 10 or 10:15, that telephone call of Mr. Anderson's that you have just testified to, did anything happen? A. Just a minute, may I say this. There is something else that had occurred to me. When he said 10:30 Thursday morning would be satisfactory—

[625] Q. Thursday morning, August 5? A. Yes. He, Andersen, qualified that by saying that unless something unforeseen happened. What that meant we did not know. But that was the date of the conference unless something unforeseen happened.

Q. All right. Now, what was the next thing that occurred on the 2nd day of August, after that telephone call? A. Shortly before 12, one of our employes came down to the office and said that there seemed to be a movement afoot to cease work, that one of his men had come to him and said that he was going to stop working at lunch-hour, and as he was a maintenance man, he said to this employe, who is chief engineer of the plant, that he had better make arrangements to take over his duties.

As a matter of fact, several of them, several maintenance men told our chief engineer this, one was the man in charge of the boilers, and was quite important that he did not leave them neglected, which would be violating the law, so he thought it was best to inform the chief that he was going to cease the work at noon, and arrangements had better be made for the care of the boilers.

As I say, they are immense boilers and if they were neglected they might blow up the block, let alone our building. Under the law, he had to serve notice so that the chief engineer could take over the duties.

[626] Q. Who was the chief engineer? A. John Donovan.

Trial Examiner Korey: Who was this man who so notified him?

The Witness: One was the fireman. Blake—Frank Blake.

Q. (By Mr. Mann) And that was reported to your office by whom? A. Jack Donovan, our chief engineer. 149

Q. And that you say was about noon-time? A. It was shortly before noon, just before the whistle blew.

Q. When is the lunch-hour in your plant? A. From 12 to 12:30.

Q. Well, now tell the Examiner what happened after just what you testified to occurred. A. At 12:30 they ordinarily go out to lunch, and eat in various parts of the building. A great many of them go to the lunch-room in the 19 Bridge Street building that I described.

Q. Let me ask you this in connection with that. Do all of the employes eat their lunch in their plant, or do some of them go outside? A. I do not believe anybody goes out or did go out prior to the strike. 149

[627] Q. The custom is to eat in? A. The custom is to eat in, some bring their lunch, others send out to the delicatessen.

Q. You have a lunch-room? A. We have a lunch-room with tables and so forth.

Q. On what floor is that lunch-room? A. That is the fourth floor of 19 Bridge Street.

Q. I see. A. To which is an entrance, as I said, on the third floor.

Q. All right. Now, did anything happen at 12 noon, do you blow a whistle for lunch? A. We blow a whistle when the engine shuts down, or the machinery is let off. 149

Q. The lunch hour is from 12 to what? A. 12 to 12:30.

Q. For everybody. A. Yes.

Q. Lunch-hour is over at 12:30? A. Yes, lunch-hour is over at 12:30.

Q. All right, what happened, if anything, at 12 noon on August 2, 1937? A. Well, I—our various employes, instead

of returning as they usually do from the lunch-room provided for them, and other places that they usually eat, some of them [628] selected a stairway; as they have no set place, they begin to filter down to the second floor that we use as our receiving department.

Between 12 and 12:30 they came down in groups, pairs and singly, and gathered at the rear of this receiving room floor, which incidentally is a place that none of them have ever congregated in before, or as a matter of fact, ever been familiar with.

I think that 9 out of 10 in the plant have never seen that particular part of the building. It is not used for manufacturing. The only ones that really are familiar with it are those in our receiving department.

But, they gathered and collected in the rear of this immense floor.

Q. That is on the second floor? A. That is on the second floor. The second floor on the John Street side, which would be the first floor on the Plymouth Street side.

Q. I see, yes. And, you say they all started to filter down into this one spot in the plant? A. That is right.

Q. Did not they eat any lunch that day in the lunch-room? A. I believe some did. Some of them ate their sandwiches on the stairs, and others brought their sandwiches to the gathering spot that they selected and ate them there.

[629] Q. And when did you, meaning you personally, first observe these employes, at what hour or what minute? A. I should think it was about a quarter after 12 that I took any great notice of it.

Trial Examiner Korey: Where did you first notice this on that date?

The Witness: I went upstairs to look around and see what everything was about.

Trial Examiner Korey: You mean on the second floor?

The Witness: On the second floor.

Q. (By Mr. Mann) When you came there, what did you see? A. I saw them gathered around in groups, talking, laughing, apparently having a great, old picnic of it.

Q. Were all of the employes there at that time? A. At that time they were not all there. I imagine some of them were up in the lunch-room and others were on their floors.

They had not all gathered at that time that I was there, but a goodly portion of them had.

Q. What did you do, if anything? A. I did not do anything. I was an observer. I came to the office and said, "They are gathering in our receiving department." I told that to Sanford.

Q. What is the next thing that was done? A. In the meantime, we had decided that if there were [630] some things coming off, we'd better take steps against sabotage.

We telephoned the 84th Precinct, which was the precinct that our factory is located in, and told them that there were signs of a strike brewing and that we felt that we should have some police protection.

Shortly after our telephone call, Captain Richter, accompanied by, I believe, two radio cars with patrolmen and men on the beat also came in, came down to the plant.

Q. What time would you say Captain Richter and these radio cars and patrolmen arrived at the plant? A. Shortly after 12, perhaps 10 minutes after 12.

Q. And,—go ahead. A. Captain Richter went up to the 501 second floor to see what it was all about. I did not accompany him up there. It would be hearsay what he said to the employees up there.

Trial Examiner Korey: As a result of that, what happened?

The Witness: As a result of that, he came downstairs and told us, Sanford and I, that our employes had decided upon a sit-down strike.

He said that he had managed to—admonished them to leave the premises, but they were very determined 505 they were going to stay there; that they were going to stay and said that under the law they had the perfect right to [631] stay there as long as they wanted, and that was their intention.

Q. (By Mr. Mann) They had said that? A. They had said that to him. We asked him, never having had any experience with that kind before, what our steps were.

He said, "Do you want them in the plant?" We said, "decidedly not." We said, "In the mood and humor they are in they are apt to be violent or destroy our property. We would like very much to get them out."

506 So, he said, "Well, under the law you have a right to put them out."

I then said to him, "Why, there are three of us here, it would be a physical impossibility for us three to go up there and eject them."

Q. By the three you meant who? A. I mean by that, myself, Sanford and Mr. Smylie. The only other executive there that day. "It would be obviously impossible for the three of us to bodily eject 100—and some employes."

It was then decided that we would engage the services of some guards, some kinds of detectives, to protect our property and arrange for the ejection of these squatters, as you might call them.

That was done, and shortly after a call was made, which [632] was then, I should think, about half-past one, four guards reported to our office.

Q. These were private guards? A. Private guards of a detective agency.

Q. Did Richter and his patrolmen and the men in the radio cars still remain? A. The radio cars stood outside our office, but Captain Richter remained in the plant. He made frequent trips upstairs and came back to report to us conditions as he found them at that particular moment.

Q. Richter is a captain, is he not, of the 84th Precinct? A. That is right.

Q. Or lieutenant? A. A captain.

Q. All right. Now, did you at any time go up to the second floor again, you personally? A. Yes, I went up and looked. I made no comment, just looked around and observed things as they were, and came back to the office and reported to my associates.

Q. How many times did you go up that afternoon to observe conditions? A. I should say twice that afternoon.

Q. What were the employes doing when you came upstairs and observed them on those two occasions? [633] A. They were having a hilarious time. They were dancing, they were singing.

Q. Were they smoking? A. They were smoking. When I returned to the office—

Q. Is smoking prohibited in the plant? A. Smoking is

most certainly prohibited in our plant by our own orders
510 and the orders of the Fire Department, and the orders of the Building Department.

Q. When was the last time, I mean as near as you can fix the hour and minute, that you observed them upstairs, you personally. A. I should think a few minutes after two.

Q. And at that time, and before that last time that you went there and saw them, would you say that all the employes had by that time congregated on that floor? A. I would say all but our so-called supervisory employes, the foremen and forewomen, shipping department employees and drivers and others, but the ordinary run of help was all there.

511 Q. Giving it to us in figures, or in numbers, how many employes, about, would you say were on that second floor, engaged in these activities that you have just described at a little after 2 P. M. on the afternoon of August 2nd, 1937? A. I would approximate at some place around 120.

[634] Q. That would be out of a total of 135? A. Yes; if you include our foremen and these other people.

Q. Including everybody? A. Yes.

Q. Did anybody, either you or any of your executives, or any of these officers of the police department, address these employes? A. Captain Richter addressed the employes. Later in the day Mr. Smylie addressed them.

512 Q. Were you present when Captain Richter addressed them? A. No.

Q. Were you there when Mr. Smylie addressed them? A. No, I was not.

Q. Were any employes engaged in any work for which they were employed at 12:30 P. M., when the lunch hour ended that afternoon? A. No one, but as I said before, the foremen and forewomen continued their duties.

Q. Now, there has been some testimony here by one or two witnesses, in which an attempt was made to have the Examiner draw the inference that they were locked in. 1511

Was anybody locked in there pursuant to the orders of any executives? A. That is preposterous. Decidedly no.

Q. There was some statement made here by one witness that [635] somebody put a bar on the door. Did you remember hearing that? A. I heard that, but they had a misconception of the actual obstruction to the door.

Q. What is that bar on the door that has been talked about here? A. It is, as I have described this morning, an iron gate that pulls back and folds up like an accordion.

Q. What is the purpose of that iron gate chiefly? Or just a minute, in a—for the moment I will withdraw that question. 1512

Does that iron gate remain locked and opened, or always locked, or is it always opened in your establishment? What is the fact about that? A. The iron gate is always locked, except at times when we are taking in supplies of raw materials, molasses, boxes, and other things. The gate is locked at all times.

Q. Was there any instruction by you or by any other executive to lock that gate on that day, or—was that gate locked prior to the sit-down strike which occurred between 12 and 12:30 that afternoon? A. It had been locked in the morning, was opened to take in a shipment of boxes; after the shipment of boxes was in and our man in charge of the gate had time to get back to it and close it again. 1513

[636] Q. Is that the usual procedure? A. Always.

Q. Was anything done differently that day that had been done any other day? A. No, it is the regular form of procedure.

Q. I show you a paper, which is a map of the second floor, a floor plan, in your factory, and ask you whether this is a correct representation of how that plant looked, how that floor plan looked on August 2, and prior to that time.

(Showing paper to witness, who examined it.)

A. That is a drawing of the lay-out of the plant.

Q. (By Mr. Mann) Where is this iron gate?

Mr. Mann: First of all, I offer that in evidence. I would like to offer a photostat copy of it.

Mr. Sklar: That is objected to, Mr. Examiner.

Trial Examiner Korey: We will allow it. It is an idea of what the lay-out is like.

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 8 in evidence.)

Q. (By Mr. Mann) Where is the iron gate that you just talked about? A. Right outside of the sliding door here. This is a sliding door, and a few iron inches separate it from this iron gate, which slides over on the side, and folds up.

[637] Q. That is on the Plymouth Street side? A. Yes.

Q. Is that the exit to the street? A. That is right on the street.

Q. Is there also another exit? A. There is a receiving platform here on this street.

(The Plymouth Side.)

Maybe ten or 15 feet or less than that from the sliding doors is another door leading directly on the Plymouth Street side, as you see outlined in here.

Q. And through what entrance do employes come in to work? A. They come in this entrance at the other end of the second floor. 151

Q. Indicating through what street? A. From John Street.

Q. That is the very other end? A. The other end of the floor.

Q. The other end of the floor? A. Yes.

Q. Yes. Go on. A. Right at the end of that street they punch a time clock, walk across the floor to this stairway (indicating) and go to their respective floors.

They go to the dressing room first and then to the floors. They come here to punch the time clock, go over [638] here, go up to the dressing room, change their clothes, and then report to their various departments. 152

Q. When they quit their work, what part of the premises do they use for an exit? A. They use this stairway (indicating). They go down here and punch the clock again.

I might explain here that previous to the strike they used to come down and punch their cards, and then go up and get dressed.

Later the group decided that that was awkward for them and we made the concession of letting them punch out as they went home.

Q. The point I make now is, do they ever use the Plymouth Street side for an exit? A. No, that is not used. 153

Q. The bar that had been talked about, that was put up according to the Board's witnesses, was a bar on the Plymouth Street side, is that right? A. That is correct.

Q. Which is the side you use for receiving merchandise? A. Right.

Q. Now, did any workers attempt to go out of the plant through the usual exit on John Street on the 2nd day of

August at 12:30 P. M.? A. Later in the afternoon, 3:30 some of them started out [639] this way.

Q. Were all the avenues for egress and exit in this plant open at 12:30? A. Yes, there is no obstruction across the wide passageway that is maybe twice as wide as this room and as long. That is unobstructed. There is nothing in the way, except as you see, these poles that come down here that hold up the next floor above.

There is nothing at all in this corridor leading all the way down here.

Q. In other words, Mr. Healey, is it your testimony that the condition in this plant at 12 o'clock, 12:15 and 12:30, and all day August 2nd was identically the same as it is on every other day of the year? A. Not a bit of difference.

Q. Did you—could you have locked in these employes if you wanted to? A. Not without violating 18 or 19 laws, including mass kidnapping. It will be necessary to lock them in, to tear down the doors that we have here (indicating) which are flimsy little things, they are just little slight frame doors.

They are swinging doors, they are not locked. They split in the center and you open them up just like the—it is a frail sort of door.

[640] We could not possibly lock a healthy man in there let alone a weak woman. We would have to tear down both doors and break up the passage—block this wall and put a strong door there, which we do not have.

This door directly in back has one of those theatre exit bars that any person from the inside will open the door. It cannot be opened from the outside. But inside, it has an approved fire door, approved by the Fire Department and

the Labor Department, that any pressure at all will open it. Just like you have seen in all theatres. 152

Trial Examiner Korey: In this hallway here?

The Witness: Yes. This door led to the stairway and two steps below is this door. It would be necessary for us to take this—to change this type of door if we wanted to lock anybody in at that entrance.

Q. (By Mr. Mann) You say that entrance, you mean the Plymouth Street side? A. Yes, the Plymouth Street side.

Q. All right. A. On this other end, this entrance that was unobstructed, they were familiar with conditions as they 152 signed the time clock at the foot of the stairs, there is a fire door separating the door from the stairway. That is a sliding door, that may or may not have been opened.

[641] Directly opposite there is the same type of frail, flimsy door with no lock, no possible way out, barricading the door leading to a stairway, that leads to our shipping room floor.

At the bottom of that stairway there is another one of those theatre doors with the bar, that when you touch it it automatically opens.

It would be necessary for us to take that door down and put up another type. 152

Trial Examiner Korey: Where is that?

The Witness: That is at the foot of this stairway. Directly opposite that time clock there is another stairway.

Trial Examiner Korey: Is that a door here?

The Witness: There is a door here of the same type

as that flimsy door on the opposite side. This stairway, as I said, if they had gone down there, our shipping room door was—they have the same type door that they have in the back, the same type gate, the shipping room door was opening all afternoon as our truck was loading and unloading.

If they had gone down the stairway they had this immense doorway to go out, maybe 15 feet wide. If they did not want to go out, the exist with the theatre door on it.

Q. (By Mr. Mann) In other words, was every means of exit open to them, by them meaning your workers, at 12:30 [642] P. M. on August 2 that was open to them any other day? A. The same condition exists every day in the year, every day that we are open.

Q. Now, how long did the workers remain congregated in the way you have just described on the second floor, on the 2nd of August, 1937? A. Well, some of them, after a second or third address by the police captain, the girls in particular, decided that they would abandon the sit-down idea and go home, but most of the men determined that they were going to stay there until Hades froze over, if I may describe it thusly, but we realized ourselves that if we ejected them before their usual quitting time we might subject ourselves to civil suits.

So, we determined that before using force to eject them, we would wait until 4:30, their quitting time.

Shortly after four, some of these guards that we had hired, went up there and said, "Now boys, we are asking you for the last time to get out peacefully. If you are not out by 4:30, it will be necessary for us to forcibly eject you."

One of the employes, who I learned later was one of our witnesses here, one of the Board's witnesses, Nicholas Andretta, seemed to have been either elected or self-appointed as their spokesman. 1528

He made the pronouncement that these guards had no legal right to force them out of the factory, that he should [643] have some proof that they represented the management.

Captain Richter, who was on the floor, then said, "The point is well taken, my boy. We must have someone in authority tell you that these men represent them."

Trial Examiner Korey: What time was this? 1529

The Witness: Shortly after four. It was not 4:30. We had given them time to get dressed and get out.

So Richter came down and said, "You had better have someone go up there, someone in authority go up there and convince them that these guards do really represent you."

Mr. C. A. Smylie went up with a little speech that he had written out. Incidentally, following our practice of being very, very careful of what we said in any stage of this procedure, he did th .

He notified them that the guards represented us, had been given instructions to physically remove them from our practices—remove anyone who insisted upon remaining after 4:30. 1530

Q. (By Mr. Mann) By the way, Mr. Healey, at that time I think you said, or did you say, that some of the girls had already left? A. As I say, they left shortly after three, after Captain Richter had spoken to them in a fatherly fashion.

He told some of them it was not lady-like and he made a speech of that tenor, and they decided that it was [644] advisable for them—he also said, as it was reported to me, that it did not look well to see girls or boys congregated in a space like that, and sitting down together. The moral standpoint of the thing was all wrong.

He was able, by persuasion, to induce them to leave the plant.

Q. So that after 3:30 only male employes remained in the plant? A. That is correct.

Q. The girls had all gone? A. That is right.

Q. How many male employes would you say remained there after the girls had left? A. Oh perhaps 20.

Q. And Andretta had given a speech there around four o'clock, is that right? A. Shortly after four.

Q. And Andretta was one of the witnesses that testified here for the Board, is that right? A. Yes, he testified he was kidnapped.

Q. He is the one that said he was locked in? A. That is right.

Q. Well, what happened after that? A. The guards said, "Now that you have our authority, are you going to get out peaceably?" Andretta remarked that, [645] "Don't move, boys, they have no right under the law to put us out of this plant." And this little speech seemed to irk one of the guards, who was a boy who I would not care to mingle with myself.

He said, "Now listen, young man, you are getting tough. But that will never get you any place. Bigger and tougher men than you have said the same thing to me, yet they have gone out of the plant. Do you go of your own accord, or must we bodily force you out of the plant?"

He was not, of course, choice in his language, but it was forcible and to the point. 1537

Q. So what happened? A. Andretta evidently concluded that discretion was the better part of valor, and said, "All right, boys, we'd better get out."

Q. And then, did they all go out? A. They all went out.

Q. Would you say that by 4:30 they had left the place? A. By 4:30 everyone was out of the plant, but the foremen and shipping department employes.

Q. Now, no work had been done in the plant by these employes of yours, both male and female, from 12:30, is that right? A. That is correct, with the exception of the foreladies. 1538

(A short recess was taken at this point.)

[646] Q. (By Mr. Mann) How many men and women were there that you describe as foremen and forewomen? A. I should say 12 maybe or a dozen.

Q. Now, what time did you leave the plant that night, Mr. Healey? A. About 10 minutes of 6.

Q. And, will you describe conditions in the street as you saw them when you left the plant at 10 minutes of 6 on the night of August 2? A. Well, I left the office in company with our metropolitan representative and a young woman that I had kept there overtime, and whom I intended to drive up to the subway. 1539

We left the office and there were two patrolmen assigned to duty in front of the plant. And they were surrounded by, if you could say, three men surrounded them. There were three of our employees whose names—if it is important, I can furnish them right now.

Q. What I am interested in most is, was there anybody picketing? Was picketing being done there? A. I would have to explain what they told me in the way of picketing.

They said that they had been assigned there to picket the plant in the night. They said that there was an equal number which was going to stay in the rear of our plant for [647] the night.

Q. Did they say they had been assigned by the Union? A. They had been assigned by the Union to picket in front of the plant. I asked why they figured that evening picketing was necessary and they said they had been told that we were apt to move machinery out of the plant, and they were there to see that we did not do it.

Q. Those were three of your employes? A. That is correct.

Q. Let us have their names, please. A. One was Frank Torrence, another one was Angelo, it is an Italian name that I would have to consult our payroll to get, Angelo, I do not think there is another Angelo in the plant. It is easy to verify that. And a Frank Coarone, I believe that is the way to pronounce it.

However, that is guessing. Those three were talking to the two patrolmen, as I left with my two companions.

Q. (By Mr. Mann) Did they tell you who the three were that were assigned to the rear of the plant? A. They did not say.

Q. Were there any girls there? A. There were no girls that evening.

Q. Was anybody walking up with signs? A. Not that night, no.

Q. Not on the night of August 2nd? [648] A. That is right.

Q. Now, on the morning of August 3, did you receive that

letter which has been offered in evidence as Board's Exhibit No. 5, a letter written and signed by Mr. Anderson? I will show it to you. 1543

(Showing witness Board's Exhibit No. 5. Witness examined the exhibit.)

A. Yes, this is the letter we received on August 3.

Q. What time did you get to the plant on the morning of August 3? A. Approximately 8:25.

Q. Was that letter there when you arrived? A. Yes, it was.

Q. That morning you have already testified— A. Just a minute, I may have to qualify that answer, that it was there when I arrived. 1544

When I arrived I did not immediately go into the room that had the letters in it. Later in the day, some time very shortly after I got there, I saw this letter, whether it was when I arrived or a short time after I arrived, I do not know, but before the day had progressed very far I had seen it.

Q. This letter you refer to, you mean Board's Exhibit No. 5? A. That is right.

[649] Q. Now, when you came to the plant at 8:25, did you see a number of picketers in front of the plant? A. I did.

Q. How many? A. I just noticed there were approximately 6. There may have been more, but those are the ones that I remember. 1545

Q. Well, during the day, did that number increase? A. Oh, decidedly. At noon it was over 100. They evidently cut it down to 20 or 25. It varied at different stages of the day.

Q. I see. Now, talking about August 3. A. This is August 3 I am referring to.

Q. And those six that you saw, the very first, when you
1546 arrived in the morning at the plant about 8:25, did they carry
4 signs? A. No, they were just walking up and down.

Q. What time of the morning of August 3 did you first see any picketer with signs? A. It was while I was going out to lunch that I noticed that signs for the first time.

Q. I show you a sign and ask you whether that is one of the signs that you saw picketers carry?

(Showing witness a placard, which the witness examined.)

1547 Q. (By Mr. Mann) Did you see that on August 3rd around
5 [650] noon-time? A. I would not say that, because it strikes me that the sign they had was a stock sign that they had taken and painted over the name of the concern that previous to the strike they had been working on, and had put our name, National Licorice Company, on it.

But, within the next day or a day or two later, this was the standard sign that they used.

Q. Did you see anything else on any of these signs? Signs that picketers used, with the exception of National Licorice Company, Y. & S. "Unfair to Union Labor and Refuses to Bargain Collectively."

1548 Did you see any other statements directed against the
5 National Licorice Company, except that one which says that your company was unfair to Union labor and refused to bargain collectively? A. I did not take any particular notice of any of that. At that time, I was not interested in those minor details and I just went into the office.

Mr. Mann: I offer that sign in evidence.

Mr. Sklar: No objection.

Trial Examiner Korey: It will be marked Respondent's Exhibit No. 9. 1549

(Thereupon the document above referred was marked as Respondent's Exhibit No. 9 in evidence.)

[651] Q. (By Mr. Mann) Your plant did not operate on August 3, did it? A. No, the engine was shut down and the boilers were shut down.

While some of our supervisors were in, you could not call it operating.

Q. No workers were there, is that right? A. No workers were there, except our shipping department workers. 1550

Q. And for how long a period after August 3 did your plant remain in the same condition? By that I mean shut down as far as actual work is concerned, by employes? A. Until the 25th day of August.

Q. And during those 23 days, namely, from August 2 to August 25, with the exception of Sundays, was picketing going on there all the time? A. Every day, yes, and I would not except Sundays. There were picketers there at all times, all hours of the day, Sundays, holidays and other days.

Q. And as you said before, when you described the conditions there with reference to the number of picketers on August 3, by that I mean, as to the number varying during different times of the day, would you say that that same condition applied to all the other days, namely, from August 3 to August 25? [652] A. Practically the same conditions, with the exception of one or two rainy days, where the pickets were noticeable by their absence. 1551

They had a few of them. Other days it was substantially the same amount.

Q. Now, was there any violence, or were there any arrests
552 during that period?

Mr. Sklar: I object to the question and move to strike out the answer.

The Witness: Yes.

Trial Examiner Korey: We will sustain the objection as far as that is concerned. Will you rephrase your question?

(There was discussion off the record.)

553 Q. (By Mr. Mann) Did police officers make arrests during those 23 days? A. They did.

Mr. Sklar: That is objected to.

Trial Examiner Korey: I will sustain the objection.

Q. (By Mr. Mann) How many arrests were made during the 23 days?

Mr. Sklar: That is objected to.

Trial Examiner Korey: I sustain the objection.

(There was discussion off the record.)

554 Q. (By Mr. Mann) Now, during this period from August 2 [653] to August 25, during the time that your plant was closed down and no workers were operating there but were on strike, as you described, did you have guards there? A. Yes.

Q. And were there also members of the police in front of the premises? A. Yes, there were always some patrolmen assigned to our plant.

Q. And the guards, as you have testified to, you employed to protect your property, is that right? A. That is correct. 1555

Q. Were they also employed to protect the persons of the officials? Or didn't you folks need any guards? A. We did not feel that we needed protection. They were there to protect property more than anything else.

Q. Did they stay during the night? A. Yes, some of them. They worked in shifts.

Q. And they stayed also during the day? A. Yes.

Q. So that your testimony is that those guards were employed by you during that period, both day and night, to protect the property? A. That is correct.

Q. Now, outside of employing these guards to protect the property, were they authorized by you or by any member of [654] your firm to say anything or to approach any strikers? 1556

Mr. Sklar: That is objected to.

Mr. Graham: Objected to.

Mr. Mann: You claim that they spoke to the strikers. I want to show you that if that was done they had no authority to do it.

Trial Examiner Korey: I would reframe the question and I would ask him if they gave them the authority.

Mr. Sklar: The guards did not testify whether they spoke or not. The only way to refute that testimony is to bring in the guards and see whether they said anything or not. 1557

(There was discussion off the record.)

Mr. Mann: All right.

Q. (By Mr. Mann) Did you give the guards any authority
1558 to speak to any strikers at all? A. We did not. They were employed solely as watchmen.

Mr. Sklar: I object to the question and move to strike out the answer.

Trial Examiner Korey: Objection overruled.

Mr. Sklar: May I have an exception?

Trial Examiner Korey: Yes.

Q. (By Mr. Mann) Did you give them any money to buy beer or any other beverages for these ladies or gentlemen?
1559 A. No, we did not.

[655] Q. Who were on strike? A. We never at any time gave them money for such a purpose.

Q. Now, what was there on August 25—or rather, you say the plant remained open until August 25? A. Remained closed.

Q. Yes, remained closed to August 25? A. To all intents and purposes. It was opened—the office was opened but the factory was not opened until August 25.

Q. Now, August 25, what happened, if anything? A. We blew the whistle and started the engine and our power plant, and proceeded to manufacture as much as we could with a
1560 depleted staff.

Q. What depleted staff—you did it with a depleted staff? A. Right.

Q. Had you received, you personally, any telephone calls or communications from any workers prior to August 25?

Mr. Sklar: That is objected to unless the witness can give names and addresses.

Mr. Mann: He will give you names.

The Witness: Yes, I will. 1561

Q. (By Mr. Mann) Tell us what you had received in the form of telephone calls and communications from any of your [656] workers prior to August 25, giving us, as best you can, the date when the form of the communication came in and what was said, why these—

Trial Examiner Korey: The names of the employes.

The Witness: I cannot give the addresses, probably, but I can give the names.

Shortly before that I received a telephone call from one Edward Mergler. 1562

Q. (By Mr. Mann) How long prior to August 25 would you say you received that? A. I would say a day or two.

Q. A day or two? A. Yes.

Q. In your plant? A. He telephoned at the office, yes.

Q. What did he say over the telephone?

Mr. Sklar: I object to the conversation between the witness on the stand and any third person.

Trial Examiner Korey: He is one of the employes. We will take it.

Mr. Sklar: Exception. 1563

Q. (By Mr. Mann) What did he say? A. He said he was desirous of coming back to work, but when he attempted to resign from the Union, they refused to accept his resignation.

[657] He said that he was afraid to come down, although he was anxious to, fearing bodily violence.

I told him that arrangements were being made to pick him up, take him, we would take every legal steps to protect our employes from violence.

Arrangements were made to pick them up at a certain spot which we set.

Another telephone call I had—

Q. By the way, did Mergler, in that telephone call, indicate to you that there were other workers who were likewise anxious to come back that were afraid? A. Yes, he said there were others and said they felt the same as he did.

Mr. Sklar: I object to that part of the conversation as to what Mr. Mergler said about the others and move to strike it out.

Trial Examiner Korey: Strike out what Mr. Mergler said about the others.

The Witness: That day, or the following day, I had a telephone call in the office from an Anna Bauer. She said that she, too, was anxious to return to work, would have been in long before, were it not for the fact that she feared violence.

I made arrangements—I asked her where she was; she said she was out in Williamsburg or Greenpoint.

[658] I said, "Where would it be a convenient place to pick you up? I will see that you get down to the office without injury."

And she arranged to meet me on Flushing Avenue, in front of the Naval Hospital.

I repaired there, picked her up and brought her down.

That same day, or a day thereafter, one of our office workers, who was related to our night watchman, told

us that his uncle, I think it was a nephew of the night watchman, told us that his uncle was anxious to return to work, had submitted a resignation to the Union, which they refused to honor. 1567

Q. What was the name of that worker? A. His name was Beck. His first name I do not know.

Q. Carl Beck? A. Carl Beck.

Mr. Graham: He called about his uncle or himself?

The Witness: About his uncle, and said that he wanted to come back.

So Beck supplemented that by coming down to our office. While we agreed to take him back and protect him, he was still in such fear of bodily injury that— 1568

Mr. Sklar: I object to that and move to strike out unless he is testifying to a conversation.

The Witness: I am testifying to what Beck told [659] This is a conversation.

Mr. Graham: Describing someone else's fear?

The Witness: Describing his own fear.

After his nephew told me he wanted to come down, I said, "Bring him down here or get him down here," and he came down.

He said he was very anxious to get back. 1569

Trial Examiner Korey: The uncle himself said that?

The Witness: Yes, he said he was anxious to get back.

As a matter of fact, he had a letter of resignation that he had tendered to the Union and they refused to accept his resignation.

I assured him that if he came down to the plant we

would take steps to see that he was protected, but despite that assurance he was fearful from the experience of others that had been given the same assurance—

Mr. Sklar: I move to strike out that part of the testimony.

Trial Examiner Korey: Yes.

Q. (By Mr. Mann) You can say whatever he said to you.

Trial Examiner Korey: But not what he felt about others. He is telling now what Beck told him, how he felt about other employes, not about himself.

Mr. Mann: That is part of the conversation.

[660] The Witness: Why he did not want to come in.

Q. (By Mr. Mann) Who else besides those three, have you any more? A. A Margaret Lien came into our office one day. She walked right in the front door.

Q. What date was that, do you know? A. I would have to refer to a pay card. I believe it is there about within a day or two, either side of that date, August 25.

She walked into our office and asked for re-employment.

The Saturday of that week—

Q. What date was that, when would that be? A. I would have to refer to a calendar.

Q. The Examiner has a calendar. A. On August 28.

Q. What date of—what day of the week was August 25? A. That was a Wednesday.

Q. I see. All right. A. Saturday of that week—well, I will go back so we can keep it in chronological order.

Friday of that week—

Q. That is August 27? A. Yes, that is August 27. I had a telephone call from someone who did not give his name, but he said he was one of our employes and was anxious to see me. 1573

[661] Mr. Sklar: I object to a conversation in that regard.

Q. (By Mr. Mann) Wait a minute, he saw him later. A. I did see him later. He asked me if I would make an appointment to see him.

Trial Examiner Korey: As a result of that call, what happened? 1574

The Witness: I met him at the Y. M. C. A.

Q. (By Mr. Mann) Where? A. In Brooklyn. He was a person who proved to be a William McCann. He had with him, as near as I can remember, an Eddie Grace, and a man by the name of Nealy, I think it is, or Cornelius.

We call him Nealy Fortunato; and two others whose names I am not familiar with.

Trial Examiner Korey: All of these are employes?

The Witness: Yes, they are all employes. I met them in the corridor of the Y. M. C. A. 1575

Q. What time of the day was it on August 27 that you met them? A. Shortly before noon, 15 or 20 minutes before noon. They asked me if I would not go into some more secluded spot as they feared they might be seen.

I decided that the most secluded spot would be the wash room of the Y. M. C. A. which was one floor below the

corridor. They gathered in there and McCann, Grace, For-
576 tunato [662] said they were aaxious to come back to work. What would be the most favorable terms on which they could come back?

I said, "Boys, you can only come back on the terms you went out on."

He said, McCann said, "Would it be possible for us to have our own bargaining committee and do our own negotiating with you people?"

I said, it most certainly would.

Q. What did he say about the union, if anything? A. "We are pretty fed up on the union. They have done nothing for
577 us. All it has been has cost us money. We have been without food, we have owed money and rent, clothing and other things. We are pretty fed up prowling the streets, being ordered around on the picket line, treated like so many curs. We would like to get our jobs back.

Q. And when he said that, were the other boys standing around, Fortunato and Grace? A. They were present at the time.

Q. Go ahead, tell us everything he said and what you said. A. I said, "If you care to come back, our doors are open to any man in our employ that wants to walk in." They said, "Well, I am afraid that if we do, a few rocks might bounce off our
578 heads."

So, I said, "All you have to do is to let me know where you want to be taken in the evening and where you want to be picked up in the morning and I will arrange transportation [663] so you will have no fear of violence."

Q. You started to say something about McCann asking you whether h wanted to know—asking you whether he

could form or they could form their own bargaining committee. A. That is correct.

Q. What did you say about that? A. They most certainly could. We would be glad to deal with any representatives of our employes. He must understand, though, that before we could deal with them it was necessary for him, or for them, to obtain the authorization of 51 per cent before we could consider that they represented our employees.

Q. Yes? A. That if such a situation could be reached, we would be very happy to deal with any committee that they so elected to represent them.

Q. All right, that conference, you say, was in the washroom of the Y. M. C. A., in Sand Street on August 27th, 1937? A. That is right.

Q. What other telephone calls, or conversations, with your employees did you have, either prior to August 27th, which you have not testified about yet, either prior to or after August 27th? A. Well, there were so many talks it would be hard for me, in fact, impossible for anybody else to say how many and [664] who the individuals were.

Mr. Graham: I ask that that be stricken, insofar as it relates to the particular calls which the witness can name.

The Witness: I can name—I do not always know who is at the other end of the wire. But I can name five or six telephone calls that I personally got, the girls refusing to give their names but saying if we would meet them in a certain spot they would come down in our cars.

Trial Examiner Korey: Well, we will take that answer as it is.

Q. (By Mr. Mann) All right, go ahead. A. I personally
582 received between twenty-five and thirty—between the 25th and 30th of the month, no less than five telephone calls from girls who refused to identify themselves but said that if we would have a car at a certain place, at a certain time, they would be there with a group of their fellow workers.

Q. What action did you take on those telephone calls? A. In every instance I arranged for a car to be there at that time and place.

Q. Did you accompany the car? A. I did not.

Q. Who did? A. Just the guards. I gave them the location and the time [665] and the guards went up there.

583 Q. They brought them down to the factory? A. Brought them down to the factory.

Q. So you conferred with those individuals in the factory, is that right? A. That is right.

Q. Give us the names of some of those girls or men that made these telephone calls suggesting that you have your car available at a certain time in a certain place to which you responded by sending a guard down in the car and bringing these girls down to the plant and then conferring with the girls, or men, as the case may be, at the factory. A. As I said before, it would be difficult to say who actually in the group telephoned.

584 Q. I am not asking about the telephone. I am asking about the subsequent conversations in the factory with those groups. A. Will you—

Q. I will try to reframe it.

Trial Examiner Korey: Don't make it so long. It is hard to follow.

Q. (By Mr. Mann) You say you got a number of telephone calls from people who did not identify themselves? 1580
A. Yes.

Q. But that suggested that you send a car? [666] A. Yes.

Q. And you did send such a car? A. Yes.

Q. And these people came down and you did send a car with a guard? A. Yes.

Q. And they were brought to the factory? A. That is right.

Q. And you spoke to them? A. Yes.

Q. Tell us the names of some of those people? A. One I recall is Agner Haade. Another was Anna Lein, as I recall. I know most of them by their first names.

Q. Give us their first names, or give us what you can that 1581
will identify them in some way without remembering their last names? A. Angeline Interdonato. This girl, incidentally, stepped off the picket line one day and asked me if I could give her my telephone number so that she could communicate with me.

Mr. Graham: I object; it is not responsive.

The Witness: That is a conversation I had with her.

Trial Examiner Korey: You tell us that.

The Witness: She asked me if I would give her my telephone number so that she could get in touch with me without the union knowing it. As I have always 1582
been available to [667] anyone in the plant, I was very glad to give her the number.

Q. (By Mr. Mann) By the number, you mean your house telephone number? A. Yes, my house telephone number.

Q. Go ahead. A. The following day, that was on Friday, August 27th—the following day, August 28th, a Saturday,

I took some time off and played a little golf. While I was
588 away, my wife received a telephone call that she took a note of for me. A chap called up who said he was the nephew of Angelina Interdonato. I had some trouble with foreign names.

He said that his aunt was desirous of coming back and could she see me some place where she would not be under surveillance.

My wife suggested that they either telephone later in the day, as I was expected back later in the afternoon, or if anyone cared to interview me, they could come down to my house.

Shortly after my dinner that night, the bell rang and
589 I opened the door and this Angelina Interdonato, and a little sweet niece of hers, about ten years old—came to the house.

Q. (By Mr. Mann) Did you have any conversation with that worker at your house that night? A. I did.

[668] Q. Tell us what the conversation was. A. She said: "I am getting so tired and fed up with this union, I would like to come back to work. Yet they threaten they will do this and do that."

I said, "Young woman"—

Q. Did she amplify what she meant by "they will do this and do that"? A. She is a very demonstrative Italian and
590 she made motions of stiletto jabbing and one thing and another.

Trial Examiner Korey: Strike that out.

The Witness: That is unimportant. But, she said she was on the point of coming back, she would like to come back to work. She feared to come back because the others said there was some violence. I also assured her that we would see that she was given trans-

portation to and from work and I arranged to call at her house with my own car the following morning, as her home is on the route that I take to my office. 1591

I picked her up and on the way down I had also arranged to pick up three other girls. That was Monday morning, August 30th.

I had arranged to pick up three other girls. One, Helen—I am afraid I cannot give her last name. She resides on East 80th—

Q. You do not know the last name, you cannot recall it? [669] A. I cannot recall it. She does live on 18—or 80th Street. 1592

Trial Examiner Korey: That is not the one that was married—

The Witness: This one is Helen something or other, living on 18th Street, right off Seventh Avenue. I can identify her by referring to records, if it is necessary.

There was another girl living on Union Street, right off Fourth Avenue, she asked me to pick her up.

Mr. Graham: I object unless you identify them.

The Witness: I can do it by referring to the payroll cards, if you wish.

Mr. Graham: Until that is done, I will object.

Mr. Mann: Do you want the name, Mr. Graham? 1593

Mr. Graham: Yes, if that can be done, she should be identified.

Mr. Mann: Suppose, then, he looks over the list that we had and in the meantime, while he is doing that, we will put the Captain on, for the time being.

(Witness temporarily excused.)

(There was a short recess, after which the proceedings were resumed, as follows:)

Testimony of Captain Michael Richter—Direct.

CAPTAIN MICHAEL RICHTER a witness called by and
594 on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

[670] Q. (By Mr. Mann) Captain, will you please give us your address? A. I am in the 84th Precinct, 72 Poplar Street, Brooklyn, New York.

Q. Now, Captain Richter, you are a member of the Police Department of the City of New York? A. Yes, sir.

Q. And how long have you been a member of the Police
595 Department? A. Twenty years.

Q. And how long have you been a captain? A. Three years.

Q. And you are attached to the 84th Precinct in Brooklyn, which is at Poplar Street? A. Yes, sir.

Q. Do you remember receiving a telephone call from the National Licorice Company on August 2, 1937? A. Yes, sir.

Q. And in response to that telephone call, what did you do? A. When I received that telephone call, about 12:45 p. m., I proceeded to the National Licorice Company on John Street, I think the number is 106 or 116. I interviewed Mr. Sanford, the president I believe he was, and is, and he informed me that the strike was in progress, his employees
596 had quit and [671] that they were assembled on the second floor, at the rear of the second floor of the plant.

I spoke to him regarding settlement of the case with the union and different little things. Just what I said and he said, I do not remember.

I informed Mr. Sanford that we acted as police officers in sit-down strikes, that we took no part in the sit-down strikes other than to preserve the peace and carry on the functions of the police department.

If he wanted the sit-down strikers removed, he should engage somebody to remove them and we would stand by and preserve the peace. 1597

Then we went upstairs to the second floor. I walked up the front stairway.

Q. Let me interrupt you one minute. When you first came in, you spoke to Mr. Sanford in his office, is that right? A. Yes, sir.

Q. And then, after finishing that conversation with Mr. Sanford, as you have just testified to, you went upstairs? A. That is right.

Q. With who, Mr. Sanford? A. I do not remember. I do not remember whether I went up alone or not, I told Mr. Sanford I was going up and have a chat and just see the conditions. 1598

Q. Did you come alone or with some police officers? [672] A. I came alone with the driver, of course, of the car.

Q. Radio car? A. There may have been an extra car waiting there.

Q. I see. A. Or, I may have ordered one there. I do not remember. Generally when a strike takes place, I generally have several policemen there in case there is a little trouble.

Q. After you talked to Sanford in the way you have described, did you go upstairs, Captain? A. Yes, sir.

Q. And was that around, would you say around one o'clock? A. It must have been around one or a little after. 1599

Q. Tell us what you said first when you came up, what did you say? A. I observed men and women, grouped together, I called it in the rear, that is Plymouth Street, I believe, the rear of the building.

Q. What street? A. Plymouth.

Q. That is correct. A. I have so many strikes that I am testifying now to the best of my knowledge.

I went to the group and I asked them who was in charge of the employees of the strike. After a minute or so, Mr. Nick Andretti, his name was, a heavy-set fellow, about my [673] height, five feet eleven, I spoke to him and I asked him what was the cause of the strike and what he intended to do.

I also informed him that the sit-down was not legal, and remaining in the employer's building was depriving him of his property and that if he was ejected forcibly, it would result in a suit, and so forth, and it would be much better if he would get the men together and leave peacefully.

Q. What did he say, Captain? A. Then, I also, I believe I told him that it did not look good to have these women mixed up with the men idly that way and it would be better if they separated to some other part of the building.

He told me that the women did not intend to stay, anyway. They were going to leave. Most of them had children and were married and shortly I noticed that the women did leave.

Then I told him not to destroy any property while they were there. Then I left to go upstairs and they promised me everything would be orderly.

Oh, yes, this Nick, he told me he was waiting for orders from his delegate of the union as to what action to take, whether to remain in the place or whether or not to leave.

Then I went downstairs and I conversed with Mr. Sanford [674] and I told him just what I had told this Nick, that we were not interested, if he wanted to put them out it was his job to put them out and we would preserve the peace and protect his property.

Q. Did Nick Andretti, or any other worker, say to you that afternoon, or any time during the period you were there, that they were locked in? A. No. 160

Q. How long did you remain there, Captain? A. I remained there about three hours, until after four, around four o'clock.

Q. And during that time did the National Licorice Company send for some private guards? A. Yes, during that period while I was there, a few guards appeared there and they told me that we employed—that they were employed to put these employees out of the premises, if they did not leave peacefully.

Q. I see. Well, go ahead. A. I conveyed that information 160 to this particular Nick, who represented the employees at that time, and these private detectives came up and addressed the group and told them they were engaged to put them off the property and that it would be a smart thing for them to leave peacefully.

I thought so, myself, rather than have a few skirmishes [675] there, and they finally all left. They waited until four o'clock or a little after and they said themselves that they would wait until four or half past four and then we would all leave.

Q. The doors were all open were they not, Captain? A. The doors that I went in and out of were open. I went in 160 through the front and went out that way.

Q. And employees could have gone in or out, or anybody could have gone in or out that way through the premises, is that right? A. Yes.

Mr. Mann: I think that is all.

Just a minute.

Q. (By Mr. Mann) At what time would you say, when
606 you left, had they all already left, all the employees, both male and female? A. Yes, I did not leave until the place was vacant; until the employees left.

Q. What time did you leave? A. Between four and five. I am not sure.

Q. Very good. Thank you.

Cross Examination:

Q. (By Mr. Graham) Can you tell me what that paper is that you have, Captain? A. Yes, a little memorandum that
607 I make when a strike takes [676] place in the precinct, that I keep this on my desk.

Q. Could I see it? A. Surely.

(Witness handed Mr. Graham the paper in question.)

Trial Examiner Korey: Did you make that memo yourself?

The Witness: Yes; every time I get a strike I write it on the memorandum and keep it.

Mr. Mann: May I look at that, too; let us all look at it.

608

Q. (By Mr. Graham) Now, we have here a chart, a photostatic copy of the floor of the building in which the workers congregated.

Trial Examiner Korey: You will note that it is John Street and this is Plymouth Street. This is supposed to be the second floor of that building. Here

is the stairway leading into the second floor, here is the back of the second floor here.

Q. (By Mr. Graham) Could you tell me, indicating on this chart, where the workers were congregated at the time you arrived? A. Here (indicating).

Q. And by what door did you come in? A. This door (indicating). Is this the ground floor?

Trial Examiner Korey: Yes.

The Witness: Where is the entrance to the street? I [677] left the office, went to the left, went up to the stairway and was facing the men as I came out and walked over that way.

Mr. Graham: The Captain has indicated that the men were congregated opposite the main entrance from the door which he entered when he came in.

Q. (By Mr. Graham) After you entered the door, you say, you went directly to Mr. Sanford's office, is that correct? A. That is correct.

Q. Could you indicate on this photostatic copy the route you chose to go to Mr. Sanford's office? A. I am not an architect and I do not always read plans correctly. I want to know where the entrance to the building is on the ground floor.

Trial Examiner Korey: Mr. Healey, will you come over here?

The Witness: I want to know where the entrance is on John Street.

Mr. Healey: That is up over here. This is the second floor, you see. You go in the office door here.

The Witness: If this is the entrance, you walk this way, you walk in off the street, there is a partition there and a girl is stationed there, a telephone girl. You walk to the left, and turn left into Mr. Sanford's office. I asked the girl where his office was. That is on the first [678] floor.

Q. (By Mr. Graham) So that when you came into the plant, you were unable to see the men who were gathered in the room? A. That is right.

Q. What route did you choose when you left Mr. Sanford's office to go to see them? A. The route I left, assuming that this is the office, I walked to the left a little at an angle over to a stairway, up a stairway and then to the left. I went to the left and then to the left again on the stairway, and then up.

Q. And that stairway brought you into this large room here? A. Brought me up to the second floor near the end of the building.

Q. And where did you first enter that large room? A. What large room do you refer to?

Q. The second floor. A. The same location, at the same place, only one story higher than where I entered.

Q. You entered the building here? A. Yes, at the stairway there where I entered was at the left of where I entered the building.

Q. So that the place where you entered the large room was probably from the stairway in the middle of the building on [679] John Street? A. Yes.

Q. And the employees, you say, were gathered around here? A. In the rear.

Q. At that time you approached the employees and went down to them? A. Yes.

Q. You testified to a conversation which you had at that time with one of the employees? A. Yes.

Q. Would that conversation have occurred somewhere around here, with the employees gathered in the room? A. Right at the extreme end. In fact, I was looking for them. I had to walk along among them. I located him in this corner. 1615

Trial Examiner Korey: You mean, Nick?

The Witness: Yes. Then I requested that he walk away from the crowd so we could talk it over by ourselves and not among the crowd. We did the talking right in front of, or a few feet away from the group that was gathered around there. 1616

Q. (By Mr. Graham) And when you talked with Nick, there were other people gathered between you and this end of the building? A. Yes, sir.

[680] Q. Now, when you were looking for Nick, over in this corner of the building, were you looking also to see what doors there were in the room and whether those doors were open or shut, locked or unlocked, and so forth? A. In fact, I never gave that a thought at the time. What would make me think of a thing like that at the time?

Q. I assumed you would not. I want to verify it, however. A. No. 1617

Q. You would not know if the doors existed or whether they were locked? You found Nick and took him on this part of the room and talked with him? A. That is correct.

Q. And then after you finished your conversation with him you went back to Mr. Sanford's office? A. I do not know if I went directly back or whether I w lked up the rear stairway

and went up to the other floors looking them over to see if
1618 there was trouble or not. I did go up to the rear. I believe the door was open at the time. I went up a few flights looking over the building to get the layout in case anything serious did happen. We always do that in a building where there is labor difficulty.

Trial Examiner Korey: Captain, when you left Sanford's office to go up to the second floor, did anybody accompany you?

[681] The Witness: I do not remember.

16 Trial Examiner Korey: Did anybody give you di-
1619 rections, tell you how to get up there?

The Witness: Yes, one of the employees told me.

Trial Examiner Korey: Did the employee accompany you or not?

The Witness: I do not know. He may have accompanied me to the stairway. In fact, if I remember right, I told him not to come up, he may cause trouble or something.

Trial Examiner Korey: They gave you directions where to go?

The Witness: Yes.

61 Trial Examiner Korey: You do not know if any-
1620 body had gone up ahead of you, do you?

The Witness: No.

Q. (By Mr. Graham) So, after you had the conversation with Andretti, you then went out through a door in the corner of the large room near Plymouth Street and went up looking through the various floors of the building to get a general

idea of the layout? A. That is what I think I did. Whether I did it at that particular time, I am not sure, but I did it.

Q. After you had that— A. It could not have been much later. It could not have been very much time that elapsed.

[682] Q. After you had completed your cursory inspection of the building, did you then return to Mr. Sanford's office? A. I believe I did.

Q. You have stated in your testimony that you went back to the room where the workers were standing, one or two other times during the afternoon, is that correct? A. That is correct.

Q. And then, when you went into that room, can you show us on the diagram approximately where you went and what you saw there? A. You mean, how I went upstairs again? I believe I went up the same way.

Q. You used the same method to go up? A. It is hard for me to remember now. I may have left through the rear. I may have come back the same way as I entered. I am not positive. I did enter one of the stairways, I came down either one or the other. I am not sure.

Q. Yes. During the times when you were in this large room talking to various workers, did you at any time inspect the room to determine whether or not there were doors that were locked or unlocked, or did you simply use whatever doors happened to be convenient? A. I made no inspection of the doors.

Q. You made no inspection of the doors whatever? A. No.

[683] Q. I believe you stated that you received a telephone call at 12:45 o'clock. A. I said about 12:45. I am not sure of the exact time.

Q. After you received the telephone call, did you have any business to attend to, or anything to do before you left for the National Licorice Company plant? A. Any business?

Q. Was there anything that you had to do? A. There is
1624 always something to do. Whether I did it or not, I do not know. When someone calls up and tells me there is a sit-down strike, we, as a general rule, proceed immediately to avoid any trouble as a result of that. We usually arrive in a hurry in such cases.

Q. Approximately how long would you say it was after you received the telephone call before you actually arrived at the plant of the National Licorice Company? A. About five or six minutes, maybe ten minutes, at the most.

Q. Perhaps about ten minutes before you actually got to the National Licorice Company plant? A. Yes.

1625 Q. Now, while you were in the plant, did you see any violence of any sort? A. No, I know there was nobody locked in there, or kept in there against their will, because if they were, they would [684] have informed me of the fact at the time.

Mr. Graham: I ask that that voluntary statement be stricken from the record in that it was in response to no question.

Mr. Mann: Here is a police officer. We are anxious to get the truth. When the police officer, the man who was there—

1626 Trial Examiner Korey: I am not sustaining the objection, so why argue about it?

Mr. Mann: All right.

Q. (By Mr. Graham) You say, what, Captain? A. I asked them to leave and they would not leave.

Q. You infer from the fact that none of the strikers asked

you how they could leave that none of them were detained against their will, is that it? A. Say that again. 161

Q. As I understood the statement as to which there has just been some controversy, did you say or intend to imply that you inferred that none of the strikers were locked in because if they had been locked in they would have asked you to let them out? A. I infer that none of the doors were locked or had been locked for the reason that they were informed to leave the premises and they did not do it. If the doors were locked, and I were to tell them to leave, naturally they would tell me, [685] "I cannot because the doors are locked." Instead, they told me they were waiting for orders from the delegate. 162

Q. You say that they made that statement? What time was that statement made? A. About a half hour after I arrived at the premises. I could not tell you about what time. About a half hour after I arrived. It may have been a little before or a little after.

Q. When you were in the plant, did you at any time see a man selling ice cream? A. No, I did not.

Q. (Trial Examiner Korey) Outside the window, on the Plymouth Street side? A. I do not remember.

Q. (By Mr. Graham) And you testified the door by which you entered when you first arrived at the plant is the door in this corner of the building which is not a part of the large room in which the employees were gathered? A. Yes, sir. 162

Mr. Mann: That does not mean anything. It is not a part. The whole thing is one big building.

Mr. Graham: I mean, it is not the same building.

Mr. Mann: Of course it is not. It is on the ground

floor. It is the street entrance. That is the second
1630 floor. How can it be the same?

[686] Mr. Graham: It has been testified that it is not the same, so I presume there is no controversy on that.

Q. (By Mr. Graham) I would like to ask you, Captain, whether departmental charges have ever been preferred against you. A. Departmental charges?

Mr. Mann: I object to that as being immaterial as to whether charges have been preferred or whether
1631 they have not been preferred.

I take it that the same rule applies to a police officer as does to a citizen. You do not have to answer that, Captain.

The Witness: I can easily answer it. It does not mean anything.

Mr. Graham: My purpose is, in the next part of the cross examination of the witness, I would be glad to explain to counsel for the company and to the Examiner in private.

(There was discussion off the record.)

1632 Q. (By Mr. Graham) Before opening up this part of the examination, you testified, I believe, in your direct examination, that you had a conversation with Sanford, the president of the Company and that the issue was raised as to whether or not the president of the company and the workers could get together to settle the strike.

Mr. Mann: I object to that question because that was [687] not his testimony. There was no issue raised at all. The testimony of the Captain is that when he first came in, not knowing anything about it, he asked a general question, "Can you settle this trouble?" 1633

I understood that was his testimony.

The Witness: I meant, if I did say something about that—

Mr. Mann: Just a little louder.

The Witness: As a general rule, I try to see if I can get the employer and the employees together in all strikes. I do not want to settle them, but to see if they can come to some temporary arrangement of some kind until such time as it is decided on by the proper officials. 1634

That is done to avoid trouble. The object is to avoid conflicts and trouble only, which might result.

Q. (By Mr. Graham) Having that desire and that general practice, I presume your testimony meant to imply that you made such an effort in this case when you arrived at the plant? A. I do not know if I made an effort. I may have spoken to them about what arrangements had been made to get together, or something like that. 1635

Q. I would like to ask you whether or not, after you spoke to Mr. Sanford about the advisability of getting together with the employees, whether or not he did anything to get together with the employees.

[688] Mr. Mann: I object to that as immaterial.

The Witness: I do not remember questioning him about it.

Trial Examiner Korey: He does not remember that.

1636 That is the answer.

The Witness: I do not remember just what he said.

Q. (By Mr. Graham) Do you remember what he did? A. What he did?

Q. Yes. A. Did he go anywhere?.

Q. Did he go to the employees? A. I do not remember what he said at that time.

Q. Do you remember whether he went to the employees that afternoon at all, while you were there? A. Whether he went there?

1637 Q. Yes. A. I do not remember it, but I was not following him around.

Q. But you do not remember? A. I do not know what he did. I could not say what he did. What he did or did not do.

Q. You could say whether he went to them in your presence. A. He did not, in my presence.

Q. And did not go to them when you went? A. No. In fact, I advised them not to.

Q. You advised him not to communicate with the employees? [689] A. I advised him not to when I went up. I insisted upon going up alone.

Q. I am not sure that I understand you. A. The employers, 1638 whether it be Sanford or the secretary or who it was, I advised them it would be better if I went up alone and conversed with the employees rather than have them with me.

Q. And was that after you had said what you usually say, about getting together with the employees? A. I spoke about that. I do not know what time I spoke on that. I generally speak to both the delegates of the union and the employer, in all strikes. We try to arrange it so they will settle, if they

can, in some way with the least possible trouble. We do not like strikes in the first place. Policemen do not like that duty. 1639
It is not a very pleasant one.

Q. If you would care to answer that question about the departmental charges now? A. Yes.

Q. I will appreciate your answering it now. A. Yes, is the answer.

Q. First, how many times have departmental charges been brought against you in connection with any labor matter?

Mr. Mann: I object to it.

The Witness: Charges—just a minute. Never. Departmental [690] charges, never. 1640

Q. (By Mr. Graham) Have charges of any other type? A. Yes.

Q. Could you tell me how many times? A. Once.

Q. What kind? A. Improper patrol, 19 years ago.

Q. And since that time no charges of any sort have been brought against you? A. No. No departmental charges of any type.

Q. What other types of charges might have been brought? I am not sure that I understand the language. A. No charges.

Q. Charges of no sort have been brought? A. You say charges? 1641

Q. Yes; I am not familiar with the language.

Trial Examiner Korey: You mean, complaints?

Q. (By Mr. Graham) I understand that departmental charges was the phrase. If there are other types of charges or complaints which have been brought against you and as

a result of which you have been involved in a hearing in-
642 volving those charges, or complaints, I would like to include them in the question with whatever words should be used. A. Naturally, every policeman is always so bound to be called at a hearing wherever there is any kind of—

[691] Trial Examiner Korey: Against you?

The Witness: Against me; I just do not know what you mean by that. I just do not understand what you mean. A lot of accusations are made against every member of every police department.

643 Q. (By Mr. Graham) Resulting in hearings? A. Whether any of them be sustained, that is the answer.

Q. Have any of them led to hearings? A. All accusations lead to hearings.

Mr. Mann: I object to hearings unless there have been orders sustaining the charges. That is the same thing as a conviction for a citizen. Unless there has been an order by his superior sustaining the charge against him for something or other, it is immaterial.

Trial Examiner Korey: Mr. Graham, are you trying to bring out that there were charges brought
644 against this officer with respect to the very strike matter that we have here?

Mr. Graham: No, with respect to other strikes, showing bias by this officer in the conduct of strikes.

Mr. Mann: I object to it. What anybody might have said about the officer or what charges they might have preferred against this officer for his bias with reference to other strikes, unless it can be shown that

on such charges there were hearings and the charges were sustained by this [692] officer's superiors— 164

Trial Examiner Korey: Have you any personal bias in labor matters, Mr. Captain?

The Witness: No.

Trial Examiner Korey: Have you had any difficulties with respect to such matters?

The Witness: At times, we get a strike where it is necessary to make an arrest. As soon as you make an arrest, they claim that you are biased. You cannot make an arrest, regardless of what policeman it is, that policeman is biased if he makes an arrest, in the eyes of a person on strike. 164

Trial Examiner Korey: Have you made any such arrests in the last year or so?

The Witness: In connection with strikes?

Trial Examiner Korey: Yes.

The Witness: Yes. I, myself, I have directed arrests.

Trial Examiner Korey: Directed arrests?

The Witness: Yes, assaults and different things, actual offenses committed in my presence.

Trial Examiner Korey: And have you had any difficulties because of such arrests?

The Witness: Difficulties, in what way? 164

Trial Examiner Korey: Because you directed such arrests in a labor situation?

The Witness: Difficulties, no difficulties, no. In [693] each case where such an arrest was made, it was upheld by the courts in each instance with a warning to deter.

Trial Examiner Korey: Was there any depart-
1648 mental difficulty as a result of that?

The Witness: Not in this particular strike.

Trial Examiner Korey: No, not in this particular strike.

The Witness: Not where we made the necessary arrests. If a person throws a stone and hits a man in the eye and is the cause of him getting nine stitches, then do you not have a right to arrest him, or something like that? Or, if they pull their trousers off, the male or the female, isn't that anything?

1649 Q. (By Mr. Graham) I would like to ask you whether on or about the 9th of June, 1937, you, at the police station, stated to Martha Waters and several others, Herman Rappaport, Steven Brooks and a few others, that the patrolman named Lynch had informed you that he had seen and identified police officers entering the apartment of Mrs. Leak?

Mr. Mann: I object to that as immaterial and as irrelevant. What has that got to do with this?

The Witness: This is in connection with a burglary. This is in connection with a burglary that occurred.

Mr. Graham: My purpose is credibility. And
1650 there are two conflicting statements. I want to get them both out from the Captain and then attempt to prove them.

[694] Mr. Mann: May I suggest, if Mr. Graham wants to go into that, that he start off nineteen years ago when Captain Richter first became a policeman and then go through everything he did. If you are going to take that isolated transaction in June, 1937, you might as well go back to twenty years ago.

The Witness: That particular case that you are speaking about was investigated by the inspector and he found that no neglect was there on the part of the members of the force concerned in the handling of that particular case. 1651

Q. (By Mr. Graham) Is that matter before the department? A. It is closed.

Q. Is there no appeal to Commissioner Valentine on it? A. If someone calls the inspector and asks him what he is doing about it and if you want to call that an appeal—

Trial Examiner Korey: Is there anything formal that you know of? 1652

The Witness: No.

Trial Examiner Korey: There is your answer.

Mr. Graham: Counsel refuses to allow the Captain to be interrogated as to that occurrence, is that correct?

Trial Examiner Korey: He has answered you.

Mr. Graham: He did not answer the question as to whether Lynch had identified the individual in question as a policeman. That is a question that I would like to ask and which I would like to have answered. 1653

[695] The Witness: You are not interested in that case. That is really irrelevant and immaterial here. That has nothing to do with the hearing that you are concerned in, this hearing.

Q. (By Mr. Graham) I would like to ask you, Captain, whether on the 8th of June you ordered the arrest of picketers in the Fine Tin Can Case.

Mr. Mann: That is objected to, as to what he did
654 in June in another case.

Mr. Graham: If it can be established that the officer acted in a way, that he acted in a way that was biased—

Mr. Mann: Is this Examiner going to try those issues? That is not in this complaint.

Mr. Graham: Naturally, because it affects the credibility of the witness, who might not even have been called—

Mr. Mann: If we are going to go into that, see how far afield we are going to go—

Mr. Graham: We would not take long on this, un-
655 less I am constantly being interrupted—

Mr. Mann: I object to things that are wholly immaterial.

Trial Examiner Korey: I am going to allow, if he wants to go into his credibility or bias in labor cases, I will allow that.

Mr. Graham: This is in a labor case involving a strike and the question was picketing.

[696] Q. (By Mr. Graham) Did you on that day, on the 8th of June, order the arrest of two men? A. Yes.

Q. Had you ever seen those men prior to the time at which
656 you ordered their arrest? A. Yes.

Mr. Mann: I object to it as immaterial whether he saw them or not.

The Witness: The arrest arose in connection with disobedience of orders directed to comply with by the department.

Q. (By Mr. Graham) Could you state what the orders were, Captain? A. We had orders to this effect that the number of pickets permitted in any instance at the strike would be up to the discretion of the commanding officer to be modified by higher authority, due respect given to the size of the industry and the number of exists, the number of entrances and the transit, and conditions in general. 1657

I restricted the pickets at that particular strike to a certain number and they absolutely refused and insisted on mass picketing, closing up the whole sidewalk and leaving no room for pedestrians to walk along.

Q. (By Mr. Graham) Will you say how many pickets were present? [697] A. Sixty. 1658

Q. Sixty pickets present on the 8th of June when you ordered this arrest? A. Yes, sir. I limited and restricted them to ten.

Q. And on the 9th of June, how many were there present, the following day?

Mr. Mann: That is objected to as immaterial.

The Witness: I do not remember.

Q. (By Mr. Graham) Did you order any arrests on that day, Captain? A. Yes, I remember making arrests there.

1659

Mr. Mann: I object to that.

Q. (By Mr. Graham) On the same ground? A. Same ground and same reason.

Q. You do not remember how many pickets there were? A. About the same number.

Mr. Mann: That is objected to as to whether he
660 remembers or not.

Q. (By Mr. Graham) In what general form did you give—that is withdrawn. After you had made the arrests on the 8th or 9th of June, what did you do further as to the existence of the picketing line?

Mr. Mann: That is objected to as immaterial.

Q. (By Mr. Graham) Did you order the picket line—

661 Mr. Mann: I object.

[698] Trial Examiner Korey: Let him answer.

Mr. Mann: I except.

Q. (By Mr. Graham) Did you order the picket line broken up at that time? A. I did not order the picket line broken up. I ordered that ten pickets be permitted only. If you call that breaking them up and chasing the rest of them and getting them out of the neighborhood, then I suppose that is what it is.

Q. (By Mr. Graham) But you allowed ten pickets to continue picketing on the 8th of June? A. Ten on one side and three or four on the other side of the street, right in
662 front of the building.

Q. How about the 9th of June? A. Same thing.

Mr. Mann: That is objected to.

Trial Examiner Korey: Same ruling.

Mr. Mann: I take exception.

The Witness: Same number of pickets.

Q. (By Mr. Graham) And the ten pickets did continue on both days? A. Correct, except that when you were not there they would bring back the sixty again, every once in awhile. 166

Q. Except for the two whom you had incarcerated? A. Except when I was there. While I was there, there were ten.

[699] Q. Now, will you state briefly your conduct as regards picketing in the shipyards strike, did you allow picketing there?

Mr. Mann: That is objected to as immaterial.

Trial Examiner Korey: Same ruling.

Mr. Mann: Exception. 166

The Witness: The shipyard strike?

Q. (By Mr. Graham) Yes. A. I was there only at the shipyards strike but once. I was guided by instructions being issued by my superior officer regarding the number of pickets.

Q. To what effect were the instructions?

Mr. Mann: That is immaterial.

Trial Examiner Korey: I will sustain the objection to that.

166

Q. (By Mr. Graham) Do you have charge of the police conduct—that is, did you have charge of the police conduct at the Kitty Kelly Shoe retail stores strike? A. No.

Q. Did you have any connection with that strike? A. No.

Q. Did you have any official connection with the Jacobs Bros. Scale Manufacturing Company strike? A. Yes.

Q. Did you take any official action in connection with that [700] strike? A. The usual procedure that a police captain takes insofar as regulating the number of pickets, etc.

Q. Did you have occasion to reduce the number of pickets?

1666 A. Did I have occasion to reduce the number?

Trial Examiner Korey: In that case.

Q. (By Mr. Graham) In that particular case.

Mr. Mann: I object to that as immaterial.

Trial Examiner Korey: Same ruling.

Mr. Mann: Exception.

The Witness: There was no—I gave them the number of pickets that was permitted, and I never reduced it. They increased it.

1667

Q. (By Mr. Graham) And did violence ensue? A. Occasionally they would have a little outbreak, throwing stones or something from the picket lines.

Q. Now, do you recall the Joe's Restaurant strike? A. Yes.

Q. Do you recall one of the guards used in that strike, named Donohue? A. Yes.

Q. Do you recall one of the guards used in that strike, named Donohue?

Mr. Mann: That is objected to as immaterial.

1668 The Witness: One of the guards?

[701] Mr. Mann: That is objected to.

Trial Examiner Korey: What do you expect to bring out by that, Mr. Graham?

Mr. Graham: I would like to reveal that, also, in private.

Trial Examiner Korey: With respect to this man's bias or his credibility that you are trying to establish, I think you ought to tell us in what way, if it does,—

in what way it affects this. It does not have to be in private.

Mr. Graham: It would lose its force if it were disclosed. I will drop it.

Trial Examiner Korey: Has this guard, Donohue, anything to do with this strike?

Mr. Graham: Not this particular strike, no.

Q. (By Mr. Graham) In the Fine Tin Can Company strike, I would like you to state briefly how many pickets were allowed for how long a space of sidewalk to be picketed.

Mr. Mann: I object to it as immaterial, what the officer did in another strike.

Trial Examiner Korey: Same ruling.

Q. (By Mr. Graham) What was the area that the pickets were to cover, and how many pickets? A. There was no area. You could picket in any area. There were ten pickets permitted on the outside of Furman Street and three or four on the north side.

[702] Q. And were the south and north sides of both streets, including the area which was to be covered by the pickets, a block long, each of them, that is, where the pickets were? A. Just the width of the building.

Q. How wide was the building? A. About 100 feet. I am not sure. I do not remember measuring the building.

Q. You would say approximately 100 feet? A. About 100 feet, maybe less.

Q. Perhaps less? A. That may be.

Q. There is another matter that was raised prior to your

arrival which I would like to verify. Did you have this—
11672 and this refers to the National Licorice Company strike—did you have a telephone conversation on that day with one Mr. Anderson, who was a representative of the union? A. Yes.

Q. Do you recall at what time you had that telephone conversation? A. It may have been around two o'clock, or so. Mr. Anderson could answer that better than I can. He called up.

Q. Approximately two o'clock? A. About two o'clock.

Q. Well, now, when Mr. Anderson called, were you in Mr. Sanderson's office—Mr. Sanford's office? [703] A. Yes.

11673 Q. And how did the call happen to come through to you, presumably you were not called originally? What happened that led you to take the phone? A. I just do not remember, to be frank with you. I may have asked to speak to him.

Q. Do you recall— A. I may have asked Mr. Sanford to permit me to speak to him. I think I asked Mr. Sanford, the president, to permit me to speak to the delegate, to see what he was going to do with these men sitting in there, why they did not get out of there.

Q. Do you recall asking Mr. Anderson whether or not the union was willing to get together with the employer and negotiate with the employer as to the settlement of the strike?

11674

Mr. Mann: I object to that. I want to state this on the record.

I called this police officer to disprove the testimony elicited on the part of the Board to the effect that there was some kind of a lock-in. One or two witnesses said they were locked in.

I brought Captain Richter to testify in answer to that and to prove to you as a disinterested police officer that they were not locked in. That is all. 1675

[704] Now, we are going here into matters—

Trial Examiner Korey: I will sustain the objection.

Mr. Mann: Oh, excuse me.

Q. (By Mr. Graham) When you were in there, in Mr. Sanford's office, and Mr. Anderson arrived, did you go to the room in which the employees who were striking were congregated with Mr. Anderson?

That is, did you accompany Mr. Anderson? A. I do not think so. 1676

Q. Did Mr. Anderson at any time that he was talking to you on that day evidence a desire to negotiate with the employer so as to settle the strike?

Mr. Mann: I object to that as immaterial whether he did or not. Here was a sit-down strike. This officer was called to remove the people from the property, and this was no time to negotiate anything unless these people got out of there or went back to work.

Trial Examiner Korey: Did you have any conversation, or did Mr. Anderson have conversation with you about possibly adjusting this matter? 1677

The Witness: I do not remember that. I know I spoke to him about getting the employees out.

Trial Examiner Korey: You spoke to Mr. Anderson about the possible adjustment?

The Witness: Yes. I did not say possible adjust-

ment. [705] I asked him what they were doing in
1678 regard to it. I did not ask him to do anything about it.

Trial Examiner Korey: Did you ask Mr. Anderson what they were doing about it?

The Witness: I probably did. It is a conversation that generally takes place when you are talking to both sides, you know.

What I said and did not say, I cannot say definitely. We had so many strikes in the precinct. I cannot remember each individual one.

Trial Examiner Korey: We are not asking you
1679 about each individual conversation.

The Witness: That is pretty hard.

Mr. Graham: That is all.

Mr. Mann: I have two questions here.

Redirect Examination:

Q. (By Mr. Mann) Mr. Graham has asked you about violence in other strikes that you have been interested in as a police captain of the 84th precinct, I am going to ask you, did violence occur in this strike of the National Licorice Company?

1680

Mr. Graham: Not within the scope of the cross examination.

Mr. Mann: You asked him about other strikes.

Mr. Graham: Correct.

[706] Trial Examiner Korey: We will allow it.

Q. (By Mr. Mann) Did violence occur in this strike, Captain? A. Yes.

Q. Was there much of violence? A. I would not consider it serious violence, but there was violence in my presence. 1685

Q. Were there arrests made? A. Yes.

Q. Were pickets arrested? A. Yes.

Q. Now, you did not limit the number of pickets in this strike, did you? A. No, except that in front of some of the entrances of the premises I limited the number to ten, the entrance on the side of the streets being—the person in charge of the pickets was informed that he could have any number of them.

Q. It has been testified that there has been as many as 100 pickets during the various times of the day from August 2 to August 25 there, did you stop that mass picketing? A. From when? 1686

Q. From August 2 to August 25. A. I was on my vacation during part of that time and I really could not answer that question.

[707] Q. Now, you were not called here to settle any strike, were you, by Mr. Sanford? A. No.

Q. You were called in to get the people out of the plant, who were engaged in a sit-down strike? A. Yes.

Q. In answer to Mr. Graham, just one question, you were not looking for any locked doors there, were you? A. No.

Q. Nobody had claimed that any door was locked, did they? A. No. 1687

Q. Nobody had said a word about being locked in or there was any locked doors which prevented them from getting out of the plant, did they? A. No.

Mr. Mann: That is all.

Recross Examination:

684

Q. (By Mr. Graham). How many arrests were made during the conduct of this strike, Captain? A. I would have to check up on that.

Q. Do you know how many arrests were made by police officers? A. At that strike?

Q. Yes. A. At least ten, that I know of. About ten that I know of. [708] I would have to check up on that.

Q. Do you recall who preferred charges against those individuals who were arrested?

685

Mr. Mann: I object to that. The proper way to prove that is to subpoena the records of the police court. Anything else is hearsay. I was not permitted to ask it. I tried to show it through Healey this morning and they would not let me.

Mr. Graham: I thought the question would not be permitted, inasmuch as counsel has gone into the question of whether or not arrests were made. I would prefer not to withdraw it. I see no harm in asking it.

The Witness: Ask that question again.

Q. (By Mr. Graham) The question is, who preferred the charges in the arrests that were made, if you know? A. As far as I can remember, the persons that suffered the injuries, persons against whom the crime was committed.

686

Q. And were there arrests made of approximately eight of the girls who were acting as pickets?

Mr. Mann: I object to that question. That does not mean anything. The fact that they were pickets.

Trial Examiner Korey: How many of those arrests were male or female?

The Witness: Mostly women. There may have been some men, but mostly women at the time that I was there. I would [709] have to check on my records. I could not answer that accurately.

Q. (By Mr. Graham) You would not say, would you, captain, that the arrests of the women were because they had committed acts of violence? That was not the intention of your statement? A. The only intention was that the women were the ones that did commit the violence.

Mr. Graham: That is all.

Mr. Mann: That is all.

(Witness excused.)

Mr. Mann: Mr. Healey, please.

WALTER J. HEALEY resumed the stand as a witness by and on behalf of the respondent and having been previously duly sworn was examined and testified as follows:

Direct Examination (Continued):

Q. (By Mr. Mann) All right, now, let us go ahead with the telephone conversations. A. The girl I gave as Helen, who lived on 18th Street, I find to be Helen Gatto.

Q. Now, haven't you given the names of every worker of yours, both male or female, that you can now recall who in

some way or other, either by telephone or by personal call
690 or by any other method tried to get in touch with the National Licorice [710] Company, after or shortly prior to August 25, 1937? A. If I search my mind, I probably could find more.

Mr. Sklar: I move to strike out that answer as not responsive to the question.

Trial Examiner Korey: At this time, you do not remember?

The Witness: All right; I do not remember. Let it go at that.

691 Q. (By Mr Mann) Now, on August 25, were there some workers that actually came into the plant ready to work? A. Yes, there were.

Q. Can you give us the names of those workers? A. Not all of them, no, but I can give a few; Anna Bauer, Margaret Lyons, Eddie Mergler, those three that I can say definitely.

Q. How many would you say were there, approximately? A. Besides our regular staff of foremen and forewomen, I would say that on that first day there were two or three that came back.

Q. Two or three? A. Yes.

Q. What about the next day, August 26th? A. Then, I
692 believe, I might say a dozen.

Q. What about the next day, on August 27th? A. Perhaps 25.

[711] Q. That was on a Friday? A. Yes.

Q. The plant did not open on Saturday, August 28th? A. That is right, it did not.

Q. Now, we come to August 30. How many would you say

came back? A. They came back in such a drove that it would be hard for me to even estimate. 1693

Q. Would you say that more came back each day? A. Every day they kept coming, like a snowball mounting on the way down a hill, as more came back, others got courage to come back.

Q. Now, August 31, was a Tuesday, is that right? A. Yes; the 28th was Saturday, yes, Tuesday was August 31st.

Q. The workers came back on that day? A. Yes, more came back. They kept filtering in.

Q. During all of this time, did you get telephone calls or messages or did they just walk in without telephoning to you? A. Practically all of them telephoned and arranged for transportation. Although, I will say that some of them just walked in the front door. 1694

Q. I see. And was the picket line still going on, Mr. Healey? [712] A. Yes, it was.

Q. By September 8th or 9th, how many workers would you say had returned to work? A. On September 9th, I can answer definitely, as I made a count, myself, of the cards, we had 109 exclusive of foremen.

Q. Now, I want to ask you this question, in all of this time from August 25 until say, September 9th, the time that you had 10 workers back to work, did you at any time ever request their return? Did you ever request them to come back? A. Absolutely no. 1695

Q. Or, is it your testimony, that they all came back and approached you for reemployment? A. Without a single exception, that is the case.

Q. What did these workers say about the union when they came back to work of their own accord?

Mr. Graham: Objected to unless the nature of the—
696 unless the maker of the statement is identified in each case.

The Witness: I have already identified four of them.

Mr. Graham: I mean, as to the statements made.

The Witness: I told the statement that they made when they met me in the lunchroom or in the corridor of the Y, or in the washroom, or what they said when they came down to [713] my house, what they said when they met me in other places, in the office, for instance. I think I have answered that question
697 thoroughly.

Q. (By Mr. Mann) Did you interview each worker that came in for reemployment? A. I either interviewed them or Mr. Sanford did.

Q. In your presence? A. Yes, in my presence. He would not open his mouth unless I was there.

Q. Tell us what each one said, in substance? A. We would be very certain of our step, knowing with whom we were dealing.

Q. By that you mean who? A. The union and our experience with them after the failure to carry on negotiations.
698

Mr. Sklar: I object to that and move to strike it out as not responsive to any question asked.

The Witness: It is responsive. I am explaining why we thought it was necessary to have a witness there.

Mr. Sklar: His reason might be any reason under the sun, which is not in evidence.

Trial Examiner Korey: The last part, strike it out.

Mr. Mann: It is in evidence that the union did not bargain with us on August 5 at 10:30 a. m. That is on their letterhead.

[714] Trial Examiner Korey: What he wants is to tell his reason.

The Witness: Why we insisted on having a witness there.

Trial Examiner Korey: We are not interested in that.

Mr. Mann: All right.

Q. (By Mr. Mann) Tell us what was said to the workers and what they said.

Trial Examiner Korey: What you said and what they said.

The Witness: Invariably we did not deviate from this policy in one solitary instance, the first thing that either I would say or Mr. Sanford would say was, "Are you coming back of your own accord and volition" and without an exception their reply was, "We certainly are," a majority contending that they had no help from the union, they are pretty sick and fed up with broken promises that the union had made to them and that they were returning and were glad to have their jobs back.

Many said that they had never cared to go out in the first place, but they were forced to do it. And now, they were coming back, not only of their own volition, but they were delighted to have the opportunity to work again.

Q. (By Mr. Mann) Did you refuse any employment to any worker who voluntarily came to you and asked for their jobs back? [715] A. We did not.

Q. Even though that person was a member of the union, or claimed that they did not want the union, or said they did want the union, did you refuse anybody employment? A. Their union activities were in no way influenced—they in no way influenced us in taking them back. They could come back whether they belonged, whether they were active, or were captains of guard, or anything else that the union had. They could come back to work if they wanted their jobs back.

Q. Did you take back even some of those against whom charges had been preferred in police court for violence? A. With the two exceptions, we took back every one against whom the charges were brought.

Q. Who were the two exceptions? A. Nick Andretti and James Blasi.

Q. Nick Andretti testified here, did he not? A. He did.

Q. And Blasi did not testify? A. He did not.

Q. Did Nick Andretti or Blasi come to you and ask for their jobs back? A. They have not, by their own admission.

Trial Examiner Korey: Would you give them their jobs back if they did come?

[716] A. Not until their violence cases are disposed of would we consider it.

Q. (By Mr. Mann) Was there a request made by the workers on or about September 9 as to a bargaining committee of their own?

Mr. Sklar: That is objected to as leading.

Trial Examiner Korey: Well, reframe the question.

Q. (By Mr. Mann) Did the workers say anything to you on or about the 9th of September with reference to how they were to get their jobs back and what they were to do, or what they wanted from you? A. They did.

Q. What did they say? A. In specific cases—

Mr. Sklar: That is objected to, Mr. Examiner, unless he states the time, place and the terms.

The Witness: I intended to do that. I said, in specific cases.

Q. (By Mr. Mann) Go ahead. A. For one, Frank Torrence, for another, Bill McCann, for another, Eddie Grace, came to me a day or two after they were back in the factory and they said, "Mr. Healey, is it possible for us to organize a bargaining committee of our own?"

I said, it certainly is possible. We will be glad to bargain with anybody that represents the majority of our [717] employees. We have always taken that position and we will maintain it.

They said, Bill McCann in particular said, "What is the procedure for getting a bargaining committee together?"

I replied that that procedure was something that we cannot go into, and that if they could get a committee, and demonstrate to us that their committee represented 51 per cent of the employees, they could do it, but the style they adopted or the procedure they followed was immaterial to me and we wanted no part of the organization of this committee, we had nothing to do with that.

Q. Did some of the employees come to you and tell you
708 that they had spoken to groups of employees? A. Yes, they said that every time they came to a group of employees during the day, someone would say to them, "What are we going to do about coming to some agreement with our employer?" They discussed it at lunch.

Mr. Graham: May I ask that all of that be stricken, because it relates to some conversations held between other people and it is clearly hearsay.

The Witness: It is a conversation I had with Bill McCann.

709 Mr. Graham: I thought you were discussing conversations he had with other people.

The Witness: Which he reported to me.

[718] Mr. Mann: Which he talked about to Healey.

Trial Examiner Korey: Mr. McCann reported to Healey the conversation he had with the others.

Mr. Graham: I will allow it if it is introduced, not as proof—not to prove the conversations, but what he said to you.

The Witness: I cannot say for certain the conversations were had. He told me and I have no reason to doubt his word.

710 Q. (By Mr. Mann) Besides McCann, were there other workers who told you the same thing? A. Yes.

Q. Name some of them; please. A. Angela—I cannot think of his last name, if I had that list again, I am afraid that even after consulting that list—it is an Italian name—I can describe him as a worker in our can department. There is only one Angelo there. He is now an assistant foreman in the can department.

Q. (By Mr. Mann) From all of these conversations that you had heard from employees from August 25 up until or about September 7th or 8th, were you satisfied from these employees that they no longer wanted to have this union as their bargaining committee?

Mr. Sklar: It is objected to.

[749] Trial Examiner Korey: I will sustain the objection to that form of question.

Q. (By Mr. Mann) What did the majority of the workers, or workers who represented other workers, come and tell you about their desire to have this union continue to represent them as bargaining agent?

Mr. Graham: I object, because nothing like a majority has been mentioned yet.

The Witness: I think that was September 9th.

Trial Examiner Korey: Did all the 109 come and tell you that?

The Witness: No, several of them.

Trial Examiner Korey: I will sustain the objection to that form of question, the word "majority" of employees.

Q. (By Mr. Mann) Tell us what they said to you? A. Those—

Mr. Graham: I object to the answer unless the question includes who.

Mr. Mann: I want to get who, too.

The Witness: I will enumerate. I will mention their names, Helen Gatto, Agnes Hardy, Bill McCann, Eddie Mergler, Anna Bauer,—shall I continue?

Mr. Mann: Yes, sure.

714 Trial Examiner Korey: As many as you can think of.

The Witness: Helen Lien,—can I have that paper?.

[720] Mr. Sklar: He might as well go over the payroll.

Trial Examiner Korey: He can use that to refresh his memory.

The Witness: There are some Italian names, so many of them it is impossible to remember them.

Mr. Sklar: May I interject the further objection to the question and the answer to be given, I move to

715 strike out the names mentioned on the ground that there is no proof that these names represented by the witness were the representatives.

Trial Examiner Korey: The question is, what employees?

Mr. Sklar: The question intended to bring out from the witness by his answer that they represented the majority.

Mr. Mann: All right.

Q. (By Mr. Mann) I show you a paper, signed September 9, 1937, with 107 names on it, or 109 names on it, and ask

716 you what that is. A. This is a document brought to our office by this Bill McCann which he stated contained the names of our employees who designated a bargaining committee of their own.

He said that they had repudiated the union and had intended that the bargaining committee—

Mr. Sklar: I move to strike out that part. If counsel wants to offer that in evidence, that is all right. 1717

[721] Mr. Mann: This is a conversation that he had.

The Witness: He said—

Trial Examiner Korey: We will take it.

Mr. Sklar: Exception.

The Witness: He said, this bargaining committee was to supersede the union as a collective bargaining agency.

Mr. Graham: If counsel is going to offer it in evidence—

Mr. Mann: I would like to offer a photostatic copy of it. 1718

Mr. Sklar: We believe the original is the best evidence. We will not destroy it, or anything else.

Mr. Mann: Look it over.

Trial Examiner Korey: Compare it and see if it is the same.

Mr. Mann: That is right, I want to keep the original.

Mr. Sklar: I think it is important to have the original in evidence, the legal caption, and all, and so on.

(Counsel examined the paper to which Mr. Mann referred.) 1719

Mr. Sklar: Unless it can be shown, Mr. Examiner, that these employees who allegedly signed this petition or paper are the unit which we describe as of the day we entered in our petition that we brought the charges before the Board, I believe this thing should be restricted to that.

(There was discussion off the record.)

[722] Q. (By Mr. Mann) Mr. Sklar has raised a question
720 as to whether or not the names signed to that paper—I withdraw that question.

Mr. Mann: I will offer this paper in evidence first.

Mr. Sklar: We object to it for that reason, unless it can be shown. If you want to mark it for identification—

Trial Examiner Korey: Ask him whether or not those who signed that paper that you intend to offer into evidence as respondent's exhibit No. 10, whether or not they who signed that were the same employees
721 who were employed by the company at or about the time the petition was filed in this issue.

The Witness: Yes, I would say that they were.

Mr. Mann: I will offer it.

Mr. Sklar: Without looking at the paper, you say that is it?

The Witness: I have seen the paper and I am familiar with it. I will look at it, if it will please you.

Mr. Sklar: Not please me; I want to know if that is a fact.

The Witness: I know the names by heart. I can say they are.

722 Trial Examiner Korey: Were there many new employees that you employed on or about September 9th?

The Witness: No, we refrained from hiring new employees [723] except in one or two instances. I would say giving you the benefit of all doubt—I would say, giving us the benefit of all the doubt that

there could not be more than five new employees in our factory on that date. 1723

Trial Examiner Korey: There being no objection, it will be marked into evidence as respondent's exhibit No. 10, marking the photostat.

Mr. Sklar: Mr. Mann, we have no objection to marking of the photostat, if you will have available during the hearing the original when we need it.

Mr. Mann: If I do what?

Mr. Sklar: If you will have available the original when we need it.

Trial Examiner Korey: And, also, Mr. Sklar would like to have noted that the photostat is that of an 1724 original paper which is legal cap size.

Mr. Sklar: That is right, legal cap size.

Mr. Graham: You do not have another photostat that you would like to throw in my direction?

Mr. Mann: Do you want it? I will give you one.

Mr. Graham: I would like to have it.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 10, in evidence.)

(There was discussion off the record.) 1725

Q. (By Mr. Mann) Now, this paper which has been offered in [724] evidence as respondent's exhibit No. 10, how did that paper come to be drawn, Mr. Healey? A. This Bill McCann that I referred to so frequently came to me and said that a group of the employees in the plant had elected a bargaining committee of which he was one of the members. He

asked me what steps were necessary for this bargaining com-
726 mittee to take to obtain recognition.

I told him that it would be necessary for him to submit some sort of a letter or form in which the employees had authorized this committee that he claimed to be on, to represent them.

He said, "Well, I have never had any experience drawing up such a letter; will you give me a hand?"

I said, "No, Bill, I do not care to have any part in it. If you will go down and ask Mr. Sanford to assist you in drawing up such a letter, I am confident he will be glad to do it."

727 Q. Mr. Healey, when you said that to Mr. McCann, you had in mind, did you, that you wanted the same proof from him that you did from the union?

Mr. Sklar: That is objected to as calling for a conclusion on the part of the witness.

Trial Examiner Korey: I will sustain the objection.

Mr. Mann: Exception.

Q. (By Mr. Mann) All right, continue your story. [725] A. Later that same day, June 10th, he came down to Mr. San-
728 ford and repeated in my presence, incidentally, that he would like such a letter. Mr. Sanford called in our stenographer, Miss Harrington, asked McCann a few questions as to how many people he felt that had voted for them as a bargaining committee and then sat down and dictated a form that we presented as respondent's exhibit No. 10.

We furnished the legal paper that there seems to be some question about, and our stenographer typed this form at Mr. McCann's suggestion.

Q. Now, there were eight names—there are eight names mentioned on here as the bargaining committee. 172

Now, I will read them off: Bertha Grossman, James Sweeney, Angello Cabrullo— A. That is the name I was groping for before when I referred—you do not blame me, do you—that is the fellow in the can department.

Q. Cabrullo, Ann Bauer, John Mankes, Louis Mascola, Jennie Marola and Mr. William McCann.

Now, did any of these other seven people, I am referring to those outside of Bill McCann, speak to you about this thing? A. Yes. Bertha Grossman and Anna Bauer.

Q. What did they say? A. They seemed rather elated that they had been selected [726] by their fellow workers. 173

Mr. Sklar: I move to strike that out as not being responsive.

Q. (By Mr. Mann) What did they say? A. They said they had been elected to the bargaining committee and they soon wanted to present some requests to our officials.

Q. Do you know how this bargaining committee was elected? A. I have not the slightest idea.

Q. Does any one of the executives know how they were selected? 173

Mr. Sklar: That is objected to, Mr. Healey testified to that.

Q. (By Mr. Mann) Did any executive direct how they were to be elected?

Mr. Sklar: That is objected to, that is not within the scope of the examination or of Mr. Healey's knowledge.

Trial Examiner Korey: Do you know, of your own knowledge, whether anybody in the company directed it?

The Witness: I know they studiously refrained from directing any such thing.

Mr. Sklar: I object to the question and move to strike out the answer.

Trial Examiner Korey: I will allow it, if you will withdraw the word "studiously."

[727] Mr. Sklar: I object to the question and the answer, even though the word "studiously" is deleted.

Trial Examiner Korey: To your own knowledge, you know that the company remained, so you say, they refrained from it?

The Witness: I say, yes, they did.

Q. (By Mr. Mann) After this paper was presented to you with all the signatures, on it, did you bargain with this committee? A. We did.

Mr. Sklar: That is objected to as calling for a conclusion. Let him state the facts.

Trial Examiner Korey: I will sustain the objection to that form.

Did you know where they held the election?

The Witness: No, we did not know the mechanics of the election.

Trial Examiner Korey: When they held it, or anything else?

The Witness: I can only state from hearsay. I was curious, myself, as to some of the methods. I asked.

they say that different procedures were followed on each floor. On some floors they selected a committee according to seniority. On other floors apparently they selected the most popular girl or boy on the floor, the one that they felt [728] was best capable of— 173

Trial Examiner Korey: They had a separate meeting on each floor?

The Witness: That is my understanding, from hearsay. That each floor decided to appoint delegates from their floor to represent them. Then, I believe, there were two to a floor. Of course, the shipping department—

Trial Examiner Korey: Who picked out these delegates, do you know? 173

The Witness: The various people on the various floors. As I say, the fourth floor, all the girls would get together and say, "Well, who will we select?" Some of them decided, as I say, to pick a man or a woman because of seniority. Others, I understand, were selected because of their personal popularity. Others, I have been led to believe, were selected because they had expressed themselves better and the employees felt that they could present their demands in a better fashion.

That, to my knowledge, is how the committee was gotten together. 173

Q. (By Mr. Mann) At any rate, all that Mr. Sanford did, to your knowledge, was draw this paper and hand it to somebody on the committee and it later came back to him with all of these signatures, is that right? A. That is correct.

[729] Q. And when this paper came back with all of these
738 signatures on it, and with the name of the bargaining committee, and with the statement that the union which had formed the—the union which formerly had been designated as the bargaining committee had been refuted by the workers, and this new bargaining committee had been neglected, did you then bargain with this new bargaining committee? A. We did.

Mr. Graham: I object to that and ask that the answer be stricken.

Trial Examiner Korey: As to the form of the ques-
739 tion.

We would rather have the record show just what was done. You draw a conclusion as to bargaining.

Mr. Mann: The last part of it is stricken?

Q. (By Mr. Mann) What did you do after this paper had come back to you, signed by the workers, signed by the bargaining committee, with the statement therein that the new committee was designated in place of the old union, in place of the union as the old bargaining committee, what did you then do, when you had those signatures of the new bargaining committee? A. The committee en masse came down to
740 our office and said that they now had conclusive proof that they were a duly elected bargaining committee and would we care to and be willing to enter into direct collective bargaining with that [730] committee.

We replied that any time convenient to them was convenient to us. They repaired back to the shop, apparently to decide on the time for such a meeting, and the following day, September 10th, the committee, with no urging on our part whatever—

Mr. Sklar: I move to strike out "with no urging on our part." 17

Trial Examiner Korey: Strike it out.

The Witness: The committee came down to our office.

Mr. Sklar: Will the witness please fix the time?

Q. (By Mr. Mann) Did you send for that committee or did they come down, themselves? A. They came down, themselves, we did not send for them.

Trial Examiner Korey: When was all this? When did they come down? 17

The Witness: On September 10th, A. M., in the morning, I do not know exactly what hour. I should fix the time at about 10:00 o'clock, if I were pressed for it.

Q. (By Mr. Mann) Go ahead. A. On the morning of September 10th, the eight members of the committee came into the directors' room, which is also the sanctum of Mr. Sanford, and, as I said, the chairman of our board.

He informed them that he had taken out our pencils and [731] figured out the very best we could do for them, but that if they had any demands that they thought they would like to present, we would like to have them do so and we would give them due consideration. 17

Q. Go ahead. A. They then gathered around the directors' table and they asked us what we could do in the way of increased wages.

We said that as we saw it then, the very best we could offer them would be a 5 per cent increase, that we amplified that

by saying that the business we had been doing was not repre-
744 sentative, that it was larger and considerably higher than the year before, but we had no assurance that the business would continue that way, we felt that 5 per cent was a most generous allowance, the best that we could make them.

Q. The 5 per cent increase to date, as of what date? A. From the signing of the contract that we were prepared to offer them incorporated that.

Trial Examiner Korey: What was the date of that contract?

Mr. Mann: It was dated on different dates. Some
745 are signed the 14th. There is one contract in evidence which is dated—

Mr. Graham: The 20th.

Mr. Mann: Some of them are signed earlier than that, is that so?

[732] The Witness: I believe so.

Q. (By Mr. Mann) They were not all signed on the same day, is that right? A. No, sir, they were not.

Q. What else did you say about the contract to the committee? A. Some mention was made of what we would do in the way of a vacation. We told them that we would be
746 willing to give every employee of the plant one week's vacation with full pay. The vacation was to become operative some time between June, I believe, and July, of 1938.

Q. Without going into it in so much detail, the Board has offered in evidence a copy of one of those contracts which you made with your employees during these days, in September. And, I will ask you now, Mr. Healey, to tell us whether the terms of those contracts were read, the terms of that contract was read to this bargaining committee? A. They were.

Q. And were they discussed? A. They were discussed.

Q. All of the clauses? A. All of the clauses were discussed and suggestions were made.

Trial Examiner Korey: What date, 9th or 10th?

The Witness: The 10th, and additional demands or requests, [733] you might say, were made for concessions that were not in this contract.

Q. (By Mr. Mann) Yes. What were those concessions? A. For one thing, one of the committee members asked if we would not give all of the employees of the plant pay for all holidays. We took out a pencil and showed her what an expensive proposition it would be for us.

Q. Who was this particular committee member, do you remember? A. Bertha Grossman. We pointed out to her that it would cost more than we thought we could spend to give them pay for all of these holidays, and they seemed to feel that they should have it, and we felt that we could not give it to them.

But, we decided they should get something and we compromised with them. We agreed to give them two holidays.

The men had been paid for these two holidays, but not the women. We asked the women if they would be satisfied if we paid the girls for Christmas and New Years and perhaps after the end of the year, or some time next year, or at the time the contract was up for renewal—not the contract was up for renewal, because it is a three-year contract, if, when it comes up for adjustment in wages, we found that we could give them more than the two days' pay next year, we would do it.

[734] They said that our compromise was satisfactory.

Trial Examiner Korey: You do not have to say anything on that further.

The Witness: Well, they had said our compromise was satisfactory, and while it would not be incorporated in the contract, it was tacitly understood that they would get these two dates, two holidays' pay, paid for the two holidays.

Another clause in the contract that seemed to need adjustment was that we had felt that it should be a five-year contract.

The committee thought that it was a little too far in the future, and so expressed themselves.

They said that they thought that three years would be a better period. The demand seemed reasonable and we agreed to write the contract with that understanding.

Then, several of the committee members, one James Sweeney in particular, complained that there was always inequalities in our rates. He said that and gave an illustration that some men doing the same type of work were not receiving the same pay.

We agreed that this was true and said that if the committee would come to us with these inequalities, we would see if we could not straighten them out and adjust them to the satisfaction of the committee.

This subsequently was done in quite a few instances.

[735] Trial Examiner Korey: This is all before the contract, is it?

The Witness: This was all before the contract was signed. This was while we were bargaining with them for the terms that they wanted incorporated in the contract. That was on the morning of September 10th.

Q. (By Mr. Mann) Yes? A. No, I have lost sight of the question.

Q. Well, the point is, did you discuss with the committee each and every one of the clauses in the contract? A. We took up every clause, that is, asked them if there were any questions about it. And if they did not understand something, we asked them to ask questions.

Some of them were a bit confused.

Trial Examiner Korey: You or Mr. Sanford did that?

The Witness: I did that. He elected me as the spokesman and I asked them questions. I asked them not to hesitate to speak up if there was anything in this contract that was ambiguous and not understood.

Q. (By Mr. Mann) Did you explain to them that you did not force them to sign it?

Mr. Sklar: That is objected to.

Q. (By Mr. Mann) What did you say to them about whether they had to sign it or did not have to sign it? A. Well, we told them that it was optional with them whether [736] they signed it or not. We also wanted them to know thoroughly—we wanted them to have every man in the plant understand that the signing of this contract was optional. That the continuation of their employment was in no way predicated upon the signing of the contract and that if they or did not, they would not be discriminated against in any way, shape or form.

Q. (By Mr. Mann) And later on, did you give to these members of this committee contracts similar—not similar, but

identical, with Board's exhibit No. 10, which has been offered
756 in evidence for distribution and explanation to the workers? A. We did. We gave to each member of the committee a copy of the contract and told them that if they cared to, they could show it to the employees. They each had proved to us they represented them and if they understood the terms of the contract, and many of those with whom they spoke did not, they were to explain it, to the best of their ability. We wanted no one to be under any misapprehension as to what it contained and say later that they affixed their signature to something they were not aware of the wording of, and we stressed the fact that they were to tell everyone that the signing of
757 the contract was optional.

Trial Examiner Korey: Did you have a copy of the contract [737] on September 10th, when you were discussing the contract and the clauses with this committee?

The Witness: We did not have a contract, itself. We had a form of a contract that we considered would be a satisfactory form to follow and incorporated in this form we had the things that we felt would be necessary in a contract of that nature.

Trial Examiner Korey: Was there much of a change
758 between that contract discussed and the contract referred to here as Board's exhibit 10?

The Witness: There was some change, I believe; there was quite a change in the overtime rate of pay. There was a change in the period of the contract.

Q. (By Mr. Mann) Change in the overtime rate of pay to what extent, more favorable to the workers? A. More favor-

able to the workers than we originally felt we could offer them. 1759

As I said, the contract that we had before us that date called for a five year term. Later when the contract we adopted was signed, we changed that contract to three years.

Trial Examiner Korey: All right.

Q. (By Mr. Mann) Now, later on, Mr. Healey, I think you testified that you gave these contracts to the committee with the explanation that you have already testified to. And you say they later on came back to the company signed? [738] A. They did. I might just explain that each contract was in 1760 duplicate, but we personally had no hand in giving any employees other than the committee any copies of the contract.

It was explained to the committee that each employee was to sign the contract in duplicate, that they, the committee, were to witness each contract in duplicate as the committee and that later when they all had all of these signatures affixed, they could be handed to us and our officials would sign for the company.

One copy we were to retain, one copy to be given to the employees—the individual employee. This was the decision that was followed.

Q. And you have in your possession the copies of the contracts which contain, how many signatures, namely, the signature of the bargain committee, is that right? A. The bargaining committee of eight members, and the individual signature of each employee, we have some employees who are unable to write. Some were able to write. Those who were unable to write affixed their sign. This sign was duly witnessed 1762

by one of the committee members who then signed the signature of the individual who made his "X."

1762

Trial Examiner Korey: How many contracts were signed—was it signed on the 10th or was it signed on the 11th?

The Witness: It was signed a few days after that. They [739] came drifting in. Each contract speaks for itself. They have the date on them.

Q. (By Mr. Mann) Did any official of the company have anything to do with the signatures attached to these contracts?

763

Mr. Sklar: That is objected to. It is beyond the knowledge of this witness.

Trial Examiner Korey: If he knows.

The Witness: I know that no official had any part of the contract, other than the signing of their name after the contract was signed.

Q. (By Mr. Mann) Did any individual of the company supervise the signing of the contract?

764

Mr. Sklar: That is objected to as calling for a conclusion and not within the witness' knowledge.

Trial Examiner Korey: I will allow it.

Mr. Sklar: Exception.

The Witness: I can say that every employee of ours in a supervisory capacity was admonished to in no way take part in the selection of the committee, the signing of the contract, or anything else pertaining to the contract. Those were definite orders with the understand-

ing that anybody who violated them would subject themselves to dismissal.

That is how strongly we felt about it.

Mr. Sklar: I move to strike out the answer as not being [740] responsive to the question.

Trial Examiner Korey: I will allow it.

Mr. Sklar: Exception.

Q. (By Mr. Mann) Since the signing of these contracts by the employees, have each of the employees a copy of this contract in his possession, to your knowledge? A. We have furnished each one of them with a copy of the contract.

Q. Are you and your employees operating under these contracts since their signatures? A. We are.

Q. And have you paid the increased wages? A. We have.

Q. Specified in the contract, since the signature? A. We have.

Q. Has any employee, since the date of the signing of these contracts, ever come to you and indicated that this signature on these contracts is not his voluntary act?

Mr. Sklar: That is objected to as calling for a conclusion and not within the knowledge of the witness.

The Witness: If anybody came to me? Nobody has.

Mr. Sklar: How would he know?

Mr. Mann: If they came, he would know it.

Trial Examiner Korey: If anybody came to you in person.

The Witness: That was what the question was.

[741] Mr. Mann: That is what I asked.

The Witness: I said, no.

Mr. Mann: Mr. Sklar objects for the sake of making an objection.

Mr. Sklar: I would not say that, Mr. Mann.

Trial Examiner Korey: In the first place, we will only take one at a time of you. In the second place, counsel will address the Examiner, and so will the witness address the record.

Mr. Mann: Let us have that last question read and let us see if we have an answer to it.

(The last question and answer were read by the reporter.)

Mr. Mann: Now, just one or two other questions, and I will be through.

Trial Examiner Korey: Mr. Healey, how many of this committee on this contract dated September 9th, respondent's exhibit 10, were members of a previous committee or two that had congregated at Sanford's office?

The Witness: We had no committee. There was a gathering. It was not considered a committee. I can see on this two names that I recognize. I would not definitely state, Bertha Grossman and Anna Bauer.

Trial Examiner Korey: You do not remember about the others?

[742] The Witness: Yes, I do. Mascola. It was not a committee, but a group that came down. But, those three, I believe, although I would not definitely say —yes, I would say definitely about Anna. As for Bertha Grossman, I am not certain.

I do know that Moscola and Anna Bauer were there.

Trial Examiner Korey: You do not know about the others? 1771

The Witness: The others I am reasonably certain were not. I know McCann was not, and I am reasonably sure that Angelo was not, although I would not say for certain.

Trial Examiner Korey: All right.

Q. (By Mr. Mann) On this last exhibit, Mr. Examiner, I would like a concession from Mr. Graham that the photostat of that exhibit, which is respondent's exhibit 10, shall be considered with the same force and effect as the original. It has been admitted without objection. Is that right, Mr. Graham? 1772

Mr. Korey: We will allow it.

Mr. Sklar: We have no objection to that, Mr. Examiner.

Q. (By Mr. Mann) Do you know, in dollars, what the 5 per cent increase in pay, based on the 1936 payroll, amounts to per year?

Mr. Sklar: That is objected to as immaterial.

Trial Examiner Korey: I will sustain the objection to that. 1773

[743] (There was discussion off the record.)

Mr. Mann: That is all for now.

Trial Examiner Korey: Is there anything at present, Mr. Graham?

Mr. Graham: Not tonight, your Honor.

Trial Examiner Korey: Very well, then, the wit-
74 ness may be excused.

(Witness excused.)

Trial Examiner Korey: We will recess at this time and resume at 9:30 o'clock tomorrow morning, in this same room.

(Whereupon, at 5:45 o'clock p. m., Monday, October 18, 1937, an adjournment was taken until 9:30 o'clock a. m., Tuesday, October 19, 1937.)

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[744] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY.

Room 235, Old Post Office Building
New York, New York,
Tuesday, October 19, 1937

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 a. m.

Before:

H. R. KOREY, Esq.,
Trial Examiner.

Appearances:

CHARLES E. GRAHAM, Esq. (233 Broadway, New York, New York), on behalf of the National Labor Relations Board.

KOTZEN, MANN & SIEGEL, Esqs. (51 Chambers Street, New York, New York), attorneys for the Respondent, by ABRAHAM MANN, Esq., of Counsel.

KALMAN SKLAR, Esq. (521 Fifth Avenue, New York,
780 N. Y.), appearing for Bakers & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity.

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[745] PROCEEDINGS

Trial Examiner Korey: All right, gentlemen, we
781 will proceed.

WALTER J. HEALEY resumed the stand as a witness by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued):

Q. (By Mr. Mann) Now, Mr. Healey, there are a few questions I want to ask you before completing direct examination.

They relate principally to the testimony of the witness
782 Tesoro last Friday.

You testified yesterday, I believe, that by September 9th 109 workers had returned to work; is that right? A. That is right.

Q. And there were about fourteen that did not come back until a week or so later; is that correct? A. To be exact: September 20th.

Q. That would be about eleven days later? A. Yes.

Q. Was Tesoro one of those fourteen? A. He was.

Q. Did those fourteen who applied for reemployment, who were the last to apply for reemployment—was Tesoro among those fourteen? [746] A. He was. 1783

Q. And did these people come in in a group or did they come in separately? A They came in in a group.

Q. When did they come in? A. The morning of September 20th.

Q. Were you present? A. I was.

Q. And did they come in to Mr. Sanford's office? A. They came in to Mr. Sanford's office.

Q. What was the conversation? A. I met them at the door. 1784

They said, "We would like to speak to Mr. Sanford."

I took them in and introduced them, and they all stood around as Mr. Sanford stood around his desk.

He said, "Well, what are you up here for?"

They said, "We are in here for our jobs."

He said, "Are you coming in of your own volition? No one has persuaded you to come in? You are coming back because you want your jobs back?"

Carmalla was one of the spokesmen for the group.

Q. You mean Carmalla Tesoro? A. Carmalla Tesoro, who was one of the spokesmen for the group, said, "We certainly do. That is why we are here." 1785

She said, "We want our jobs back; we want our work."

[747] Q. She testified here Friday, I believe, that Mr. Sanford said, "Sign these contracts" or words to that effect.

What did happen? A. That is far from what she said.

Q. Tell us. A. She and one or two others said that while they were out they had heard from some of the workers that a contract was in existence that gave them protection on their

jobs, that that was one thing they feared, and the one
7786 thing that made them stay out as long as they did.

They would have been back sooner.

They were told that if they did come back, we would later institute reprisals; that when we had a slack season we would lay them off; they would be the first to be laid off; and they would like to sign this contract so that they would have protection against such an emergency.

Q. Did they say who had indicated that statement, that you have just made? A. They didn't just say; they said they had heard.

Q. What did Mr. Sanford say? What did Mr. Sanford say
7787 when Tesoro spoke that way? A. Mr. Sanford said he would be very glad to extend to them the same option that everyone else in the plant had, of signing a contract; they were there to sign one, but he wanted it distinctly understood—and I might add that he [748] said this in the presence of other witnesses who were in the room at the time—that if they did sign a contract, it must be of their own volition.

He wanted them to understand that the signing of the contract was not a condition of employment; that whether they did or did not was a matter of extreme indifference to us.

Q. He means— A. Meaning the National Licorice Company.

7788 Q. What did Tesoro say to that? A. She said they wanted protection, "that we want protection on our jobs."

Q. What did she say about the union? A. I really don't recall anything she said about the union at that particular time.

Q. Did any of the others? A. Some one, whom I couldn't identify, said,—

Mr. Sklar: I object to that.

Trial Examiner Korey: Tell us the result of that 178
conversation.

The Witness: The result of the conversation was that we left this group of fourteen in the room we were in.

Mr. Sanford—

Q. (By Mr. Mann) With the committee, or without the committee? [749] A. The committee was in there.

Q. Yes. A. Before we get to that; we explained to them that a committee had been elected in their absence, and Carmalla spoke up and said, "How can we"—this last group 179
of fourteen—"get representation on this committee?"

And we said that in view of the fact that the committee was a committee of eight, it would be awkward to have a larger committee, that it had been duly elected, that it would require a new election, and we felt that the committee that had been constituted by our employees should stand as was, and that their positions had been open for them at the time the committee had been selected by the employees.

If they had cared to come in then, their jobs were always open, as they knew, and we didn't feel that another election should be held.

They then asked how they could obtain the contracts. 179

We said that by applying to the committee they could get the contracts and the committee undoubtedly would be glad to explain anything in the contract that wasn't clear to them.

Mr. Sanford and myself, and Mr. Smiley retired from the room, leaving them with no one but the committee. From that point on my testimony would be hearsay.

I heard—

[750] Mr. Sklar: I object.

1792 Mr. Mann: All right, never mind that.

Q. (By Mr. Mann) And were the contracts finally signed? A. Yes.

Q. By all these fourteen? A. By the fourteen.

Q. Have any of these fourteen ever come back since September 20th to your firm, or to anybody in your firm, and said that they didn't want the contract? A. They did not.

Q. Did they say anything about having been forced to sign these contracts? A. No, they did not.

1793 Mr. Sklar: Objected to.

Trial Examiner Korey: We will allow it.

Mr. Graham: May I ask that such questions be related in their application to the witness' knowledge alone rather than covered by, "Did anybody say anything to anybody?"

Trial Examiner Korey: He is giving his own knowledge.

Q. (By Mr. Mann) Have they said anything one way or the other? A. At no time.

Q Have they received the increase provided by the con-

1794 tract? A. They have.

[751] Q. Tesoro testified here on Friday and said that since the making of that she hasn't earned any more. I believe that was her testimony. No more since the signing of the contract than she did prior to the contract was signed: is that correct? A. That is false.

Mr. Sklar: That is objected to on the ground that the payroll is the best evidence.

Mr. Mann: We have got—

Mr. Sklar: Put that in. 1795

Q. (By Mr. Mann) Have you refreshed your recollection about whether or not this is so. A. I have taken the records.

Q. From what? A. The pay cards stamped at the time she came in to work each morning and the time she went home each night for a period of six or seven weeks prior to and after a strike.

Q. And do you now state that she has earned more since the strike and since the signing of the contract, than she did before? A. Certainly.

1796

Mr. Sklar: Objected to as immaterial, in the first place, and furthermore on the ground that the payroll sheet speaks for itself.

Trial Examiner Korey: Subject to connection, I will [752] allow it.

Q. (By Mr. Mann) Now, you have produced here this morning some cards—eight of them—and do these all apply to the witness, Tesoro? A. That is correct.

Q. Just look at those and tell us what they are. A. They are payroll cards that are given to girls.

They use the cards to put in a time clock. 1797

That is stamped when they come in in the morning and when they go out in the evening.

Q. You are holding five of these cards in your hand; will you explain to the Examiner what they are? A. Here is the first. One is a card for the week ending June 30th.

Q. 1937? A. 1937.

It showed that she worked four days and here her total pay was $16.33 for those four days.

The following week was a six-day week—no, it was a four-
798 day week—ending July 7, 1937. She worked four days and her total wages for that week was $16.05.

The next week, the week ending July 14th, was a six-day week—July 14, 1937—I believe that is important; she said she didn't work six in 1937.

For that six-day week she earned total wages of $22.66.

[753] The week ending July 21st, the following week, she worked five days and received total wages of $16.47.

July 28th—week ending July 28th—she worked five days, and her total wages were $21.57.

Q. Now, I show you three cards for the weeks ending
799 September 29th, October 6th, and October 13th, which indicate her pay after she returned to work, and after she signed the contract, which we have talked about, and I ask you whether those are the cards which indicate pay of this girl, Tesoro? A. Those are the cards.

Q. Now, I ask you to look at these cards and tell us what she earned for the week ending September 29th, under the new arrangement. A. A six-day week, $27.48;

The week of October 6th—another six-day week—shows $25.58;

The week ending October 13th, which is a five-day week, $22.29.

800 Q. This girl, Tesoro, works on piece-work; is that not correct? A. Yes.

Mr. Mann: I offer those cards in evidence.

Mr. Sklar: No objection. You may mark them as one exhibit, if you want.

Trial Examiner Korey: We ought to mark them as one [754] exhibit.

(Thereupon the documents above referred to were marked collectively as Respondent's Exhibit No. 11 in evidence.)

1801

Trial Examiner Korey: Has she had any four-day weeks since she returned to work?

The Witness: No, they worked on Saturday since they returned; and on one or two Saturdays they expressed a preference not to work, and we had acceded to their request.

Q. (By Mr. Mann) Well, just one other question; This bargaining committee that you have testified was elected on or about September 9th, and who signed these contracts which are identical with Board's Exhibit—

1802

Mr. Graham: Ten.

Q. (By Mr. Mann) (Continued) Ten.

I want to ask you whether you and the management have conferred with this bargaining committee on any occasion to reference to any matters concerning the workers after the signing of these contracts? A. We have, yes.

Q. (By Mr. Mann) Will you tell the Examiner the different questions or the different problems that have been discussed by your company and the bargaining committee since September 9th, as relating to anything in the shop. [755] A. Well, for one thing, as I mentioned yesterday, the matter of vacations—holidays with pay.

1803

Mr. Sklar: Excuse me, Mr. Mann, do I understand that the witness is referring to any bargaining after the ninth day of September?

The Witness: That is right.

1804 Mr. Mann: Sure, to show that it is a bona fide bargaining committee.

Mr. Sklar: Isn't he now testifying as to what happened on September 9th.

The Witness: September 9th they were elected, as far as I know—after September 7th.

Trial Examiner Korey: He is giving us additional bargaining relations.

Mr. Sklar: Will the witness give us the dates?

Trial Examiner Korey: Yes, give us dates.

1805 Q. (By Mr. Mann) Give us the dates of the matters you discuss. A. It will be difficult to give exact dates. I think on September 10th they were down, and, as I say, bargained over pay for holidays.

On subsequent occasions, maybe two or three days after, I believe, they were down to discuss the taking back of the group of fourteen that were out.

As many in that group had been guilty of violence, we [756] felt that some of our employees might not care to have them back, and the bargaining committee came down to us and said that they felt we should take back any girls that desired to come back, and let whatever transpired during the 806 strike be forgotten.

We agreed to their request and said that if they did come back, we would certainly not hold whatever they did during the strike against them.

Another thing that they came down about was some inequalities that they said existed upstairs.

Q. Inequalities? A. Inequalities of wage.

Mr. Graham: Can the witness state the date?

The Witness: Men doing the same type of work and not receiving as much. 1807

Mr. Graham: Will you identify the day on which those conversations took place?

The Witness: I believe that was a day or two after the ninth.

Now, what particular date, I don't know.

They have been down quite frequently since asking for additional contracts—

Q. (By Mr. Mann) As far as this inequality of pay, which they claim existed, as to some of the workers, can you mention the name of any worker to whom they have raised that [757] question? A. I remember one of the committee-men— 1808

Q. Which one? A. James Sweeney.

Q. Sweeney? A. Complaining that some boy upstairs—I can't think of his name—was working two machines and receiving the same rate of pay as a boy working one machine.

He also, I believe, said at the same time, that our rear elevator operator, doing less work than the front elevator operator, was getting the same, if not more money.

I don't know whether it was more or less, but I know it was no more.

I don't think that was fair. 1809

He complained also that some of the employees that had come to work later, when we took over—we purchased the business of—a competitor who was liquidating his licorice business. We took over at that time some employees.

Q. How long ago was that? A. I should think that was seven or eight years ago.

It was a licorice and candy business—Gardner Lucas Com-
1810 pany.

At that time, in purchasing the business, we agreed to take in our organization, some of the Gardner Lucas employees, and explained, when Sweeney raised this question, that while [758] it was quite true that seniority should be rewarded, we had agreed, when we took the employees in, that we would pay them the same rate of pay they had earned while in the employ of Gardner Lucas Company.

Some of those men and girls had been named and appeared at this hearing.

We told the bargaining committee that our hands were tied.
1811 It wasn't that we appreciated their work more than the old employees of ours, but we had agreed, and lived up to the agreement we made at the time we purchased the business.

Q. Any other instances of bargaining with the committee after September 9th? A. No, but at times they have come down to the office asking for new contracts.

I have asked them if any problems existed upstairs that they cared to speak about, and they have contended that their working conditions are ideal and they saw no necessity for bargaining.

Mr. Mann: I think that is all.

1812

Cross Examination:

Q. (By Mr. Graham) Now, Mr. Healey, you have testified that there were guards present at the plant from the 2d of August until the 25th; is that correct? [759] A. Yes.

Q. Why—where did the guards stand during all this time? A. They weren't fixtures; they wandered around the plant.

Q. Were they given any stations, any areas which they were to cover? A. No. That was left to their own judgment. 1813

Q. Where were they usually? A. It is hard to say, they wandered around, and jumped around.

We even had occasion to look for them and could not find them.

Sometimes they were in our boiler room; I on occasion, found them up on the second floor wandering around, and found them in the shipping department, and then I would find them out at the front door.

Q. So that you never knew where these guards were from one moment to the next? A. No, we couldn't keep track of them; they were on the move. 1814

Q. When did the company receive a telegram which was sent from Galvin to Anderson as to the exclusive representation? A. Why, I believe on July 16th.

We don't date or stamp our telegrams; which is, in a measure, my fault.

We stamp our mail, but I receive every telegram that [760] comes in the office, and I don't—I should, I know—but I don't date or stamp them.

But to the best of my knowledge it was July 16th.

Mr. Mann: Will you look at the telegram please. Your date is all wrong, so look at the telegram before your answer. 1815

Trial Examiner Korey: Look at the telegram to refresh your recollection.

Let him look at it.

Mr. Sklar: I was just going to hand it to him, Mr. Examiner.

(Handing paper to witness.)

The Witness: (Looking at paper) Well, it doesn't help me much.

Trial Examiner Korey: What date was it?

The Witness: It bears the date, the 14th, there.

It doesn't seem likely that it would come in on the 16th.

Q. (By Mr. Graham) That is your recollection.

Now, in your testimony, Mr. Healey, you have frequently used legal phrases.

Are you familiar with what "hearsay" means? A. Hearsay?

Q. Yes. A. Yes.

[761] Q. Are you familiar with the question of an authority of an agent?

You spoke of guards having certain authority and not having other authority.

Are you familiar with that? A. As familiar with it as the average layman.

Q. And no more familiar than the average layman? A. I shouldn't say so.

Q. Do you know what it meant when you say, "mass kidnapping"? A. Oh, very well.

Q. What do you mean, in relation to this case, about mass kidnapping of workers? A. My differentiation of it would be to differentiate between the kidnapping of an individual, and the kidnapping of a whole group.

Q. Now, you have indicated the possibility of several suits being brought in case the employee was convicted prior to 4:30.

On what basis did you have that belief? What made you think of such civil suits being brought. A. Whenever

there is any violence or force used, it is always my belief you are subject to suit.

1819

You may not lose them, but you would not have at least the annoyance of defending them; that is my belief.

[762] Q. And didn't you think that if the order of conviction took place at 4:30 that would also subject the company to suit? A. Yes, but I then felt we had a better case.

If we put them out before the usual quitting time, they might have a just case in law, whereas if they refused to leave at the hour they usually quit, our case would be greatly safer.

That was my idea as a layman.

Q. Are you familiar with the requirements of the exclusive bargaining right under the Wagner National Labor Relations Act? A. Again, as familiar as the layman.

1820

Q. What are those requirements, do you know? A. My conception of that is that employees have the right to select, without intimidation or coercion by anyone, representatives to speak for them in collective bargaining.

My understanding of it is that can be done either by unions, such as the A. F. of L., or the C. I. O., independent union, or by their own group, if they so desire.

Q. When did you first become interested in the question of collective bargaining? A. Oh, I think, sir, the last couple of years.

1821

Q. For the last several years? A. From the trend of times.

[763] Q. What reports of labor cases have you read in relation with collective bargaining under the Act?

Mr. Mann: That I think I object to—

Mr. Graham: There was a reference to that in the direct.

Trial Examiner Korey: If he knows, and is willing
822 to tell us—

Mr. Sklar: He testified that he has read many labor cases.

The Witness: I read the paper practically every morning from cover to cover and I read labor cases as I do all other news items, and they have interested me, as they would.

Q. (By Mr. Graham) So, for the last few years, you have read labor cases and have been familiar then, with the conduct of the National Labor Relations Board, as well as any
823 other Boards, that might have been brought to the attention of the public?

Mr. Mann: He didn't quite say that; he said he read the newspapers.

Trial Examiner Korey: He is referring to the newspaper components.

The Witness: I have read these articles, as I have read the news items, and I believe my knowledge of the labor law is about as clear as the average layman.

824 [764] Q. (By Mr. Graham) Do you feel that the average layman reads the newspaper cover to cover on this point every day, sir? A. I don't know about the average layman; it would be hard for me to say what the average layman does, but that is my belief.

Q. In any event, you have more than a fair comprehensible knowledge of the labor situation than does the average reader of the newspapers? A. I would never qualify as an authority.

Q. Not as an expert.

On the 16th of July, you have stated, that you didn't introduce Mr. Sanford; that Mr. Dorsey introduced Mr. Sanford, is that correct? A. That is correct. 1825 43

Q. In Mr. Dorsey's introduction, did he say that he wished the employees to join or to organize any union they might wish to join, or anything of that nature? A. He didn't. I can give you his exact words, if you care to hear them.

Q. Yes. A. He said, "Boys and girls, I am going to introduce our president, Mr. D. D. Sanford, who would address a few remarks to you."

With that, he concluded.

[765] Mr. Dorsey is not an orator, and I think that is about the extent of his—"Boys and girls, I am going to introduce our—"—that was about the extent of his speech. 1826 14

Q. On the 16th of July, did you make any remarks yourself to the employees gathered in the room? A. I did.

Q. What did you say? A. I said very briefly that I had in back of me—and I reached back to get them—a competitive package made by a concern in the middle West, and specified the name, Switzer Licorice Company.

One of our chief items is a five-cent box called "Nibs."

This competitor has got our package almost word for word—he calls the package, and the piece of—piece in the package is identical in shape. 1827 15

I held three cartons of ours in my hand and three cartons of this competitor's, and I asked the employees if from where they were standing or sitting they could tell the difference between the competitive package and ours.

I remarked that I just mentioned this to show the type of competition we had to contend with.

With that, I retired.

828 Q. Did you discuss the issue of the similarity in wrapping of your product and the product of other companies at any other time during any conference which we have discussed here [766] at the hearings? A. When Mr. Galvin was there in company with Messrs. Sklar, Bicariello and Anderson, we had on the table of the Chairman of the Board a few of these packages, and during the conversation we again—not again, because we hadn't brought it up with them before—called their attention to the similarity of the packages.

Q. When did that occur?

That was the conference, I believe during which you 829 noted the exact times? A. July 29th.

Q. Approximately when in the conference? A. Oh, about three-quarters of the way, I should think it was.

Q. After the gentlemen looked the plant over and looked at the showcases, I believe? A. Yes, I believe so.

Q. The talk that you made to the employees in the lunch room was prior to the Sanford speech? A. I just said that—

Q. The remarks that you mentioned— A. At the conclusion.

Q. I am sorry, I didn't hear you. A. Yes.

Q. Then you didn't say anything to the employees before [767] Sanford spoke? A. Oh, no.

830 I said—it would have been presumptuous for me to introduce him, the president, who has been in the company longer than I have.

Q. Was Sanford still in the room while you were speaking to the employees? A. Yes; was standing right behind me.

As a matter of fact, I will amplify that; I will say that Sanford said, "Now, I will introduce"—no, it was, "Mr. Healey will speak a few words to you."

Q. Sanford introduced you? A. Yes.

Q. Now, as you said a few moments ago, the guards were given more or less complete freedom to go wherever they wished when they were at the plant? A. If they watched properly, they would have to have freedom. 1831

Q. They were inside and outside of the various places, were they? A. Wherever they felt it was necessary to be; we didn't check on them.

We were too busy ourselves to bother watching the watchmen.

Q. During the strike, why did you stay yourself? [768] A. Why?

Q. I'm sorry, I meant where did you stay? A. The greater part of the day I spent in my office, although quite frequently during the day it was necessary for me to go out on the front porch. 1832

Our engines were shut down; we had no fans on, and it was one of the warmest spells I have ever remembered—this past summer.

It was unbearably hot in the office and I was quite frequently during the day—more than it is my practice, I know—out on the front steps.

Q. During the time you were on the front steps, were there any guards there also? A. Oh, at times, and at times they weren't; I was there alone. 1833

Q. And were there very many occasions when guards would be down on the front steps as long as you were there, but that you couldn't always see them. A. I don't know.

Q. When you say it—would you say it was possible for the guards to be there when you couldn't see them? A. It is possible.

Q. During your previous testimony you have stated that
1834 there had been no labor issue at the plant prior to the reception of Mr. Galvin's telegram; is that correct? [769] A. None that we were aware of.

Q. None that you are aware of, and your relations with your employees were entirely satisfactory, and had been no issue? A. That was our relations.

Q. How long did that condition obtain?

Aside from Galvin's telegram, except for the fact that you had gotten the telegram and you didn't know who sent it, and so on, did anything change after you got the telegram? A. No, I wouldn't say that.

1835 We had the feeling from our conversations that there might be a few in the plant that were discontented.

Q. When did you first get that feeling? A. I should say a day or two after the receipt of the telegram.

Q. A day or two after the receipt of the telegram which you testified was received on the 16th of July? A. Yes.

Q. Why did you call the conference on the 16th of July? A. It was really my idea. As I said, when we received this telegram we felt that it might not be a legitimate wire.

I said to Sanford, "I have circulated around the plant on several occasions, a lot of the boys out there know and [770] like me, and it seems to me I would have seen evidence
1836 of some sort of dissatisfaction."

Q. When the conference— A. I haven't finished with my answer.

Do you wish me to go on?

Trial Examiner Korey: Yes. Let us have it.

The Witness: I said, "If they are so furtive about the union, if they belong to any, we should get over

to them the idea that that is not necessary. We are here at all times to listen to them. They have the right to organize and belong to any union they see fit, we must get over to them in some way that they have this right, not have them sulking around corners, and treat them as though it was a crime; get over to them the idea if they want to belong to a union, they don't have to hide in the corner or keep it a great secret. 1837

That was the object of Mr. Sanford's speech that day; to let them know if they wanted to form, it would not be treated as a crime.

We, under the law, would have to—we couldn't discriminate against them, and dispel the idea that what they were doing had to be considered a crime; they should be in the open with it, not find it necessary to hide behind corners about it. 1838

That was the purpose of this talk of Mr. Sanford's.

[771] Q. How was the meeting called? A. That would have to be hearsay.

I believe Mr. Dorsey sent instructions to the foreman, or something, that there was to be a gathering in the lunch room.

Q. Did you give any instructions for the calling of this meeting? A. No, I didn't. 1839

Q. Do you know whether Mr. Dorsey gave instructions for the meeting? A. I believe he did.

As a matter of fact, he must have, or they wouldn't be there.

Q. Do you know who authorized Mr. Dorsey? A. Yes, Mr. Sanford authorized Mr. Dorsey in my presence.

Q. Mr. Sanford, in your presence, asked Mr. Dorsey to call the employees together in this hall? A. To call the employees together in this hall.

Q. Then it would appear that the method of calling the
1840 meeting isn't hearsay at all, that you actually had the authorization given. A. I heard the authorization given, but I didn't hear him carry out the order.

It is taken for granted that they were carried out, as they were there.

[772] Q. Now, at the time this conference was called there was some doubt in your mind as to whether or not the telegram indicated actual dissatisfaction among the employees, or simply indicated that one or two had become discontented; is that right? A. Yes.

Q. And you called the conference with that idea in your
1841 mind? A. We called the conference with the idea of dispelling the fears that our employees might have, that they had to treat this thing—if they were to join the union; that they had to treat it as a dark secret.

We wanted to loosen their minds of such an idea.

Q. Did anyone at that conference ask the employees whether they did want the unions to represent them? A. We didn't ask them whether they did; as a matter of fact, in Mr. Sanford's statement he said whether they did or not was a matter of their choosing.

Q. But your purpose was to know their secrecy? A. That was the whole purpose.

1842 Q. In your direct testimony as I believe the record will show, you stated Mr. Dorsey introducing Mr. Sanford, referred to the question of joining and organizing a union, and the question of such joining and organizing was up to the employees. [773] A. Mr. Dorsey said that?

Q. I said in your direct testimony you quoted Mr. Dorsey as having said that. A. I believe you are confused.

Q. You deny that you said anything of that sort? A. Oh, yes, decidedly. 1843

Q. You deny also that you said that Dorsey told them there would be no discrimination against them, depending upon whatever union they joined? A. That was Mr. Sanford's —then you have "D. D."—

Q. I have Dorsey.

Have you, Mr. Examiner?

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

1844

Trial Examiner Korey: On the record.

Proceed, gentlemen.

The Witness: I deny that I have made such a statement.

Q. (By Mr. Graham) If the guards were frequently out in front of the plant when you were not there, you can't have any idea as to what they said or did except from hearsay? A. Except while I was out there.

What the guards did—they were employees of a type that I wouldn't care to patronize with.

What they did or said was a matter of indifference to me. 1845

[774] Q. (By Mr. Graham) Why wouldn't you care to patronize with them? A. They were a type upon which one would look—they were very nice boys, but they wouldn't be the type that I would elect as a friend.

Q. What type were they? A. It is hard to describe the type.

If the question is to establish that they were rough-necks—

Q. I just wondered. A. If that is what you are trying to find out, I would say, no, by no means.

By that, I wouldn't consider them as people that I would

care to mingle with socially, but they were clean-cut boys;
1846 all of them.

Q. You can't, therefore, tell whether these guards solicited employees to return or leave the picket lines, except when you were there? A. No.

Q. Naturally.

Where did these guards come from, what agencies sent them?

Mr. Mann: I object to that as immaterial.

Mr. Graham: It is certainly a matter relating to the conduct of the guards with relation to the strikers dur-
1847 ing [775] the strike.

There is a lot of testimony,—

Trial Examiner Korey: There is no need of discussing that; we will allow it. Take your exception.

Mr. Mann: Exception.

Q. (By Mr. Graham) What companies were these guards sent from? A. The Harry Conners Detective Agency. I believe that is the name—Harry Conners or Connor. If you care to later, I can get you their address.

Mr. Mann: All he wanted to know was the agency.
1848 He didn't ask you to get anything.

The Witness: I had to guess at the name—Harry Conners or Conner.

Trial Examiner Korey: Let us conduct this in an orderly fashion; we are going to complete this hearing today, I hope.

Q. (By Mr. Graham) Now, can you get the address of the agency? A. I will try.

Q. Who ordered the guards; did you telephone? A. Mr. Sanford. 1849

Q. And he, presume, would know who he telephoned, wouldn't he? A. Yes.

Q. Had you ever called those guards before that for any [776] purpose? A. I had not personally.

Q. Had anyone in your presence ever called them, to your knowledge? A. No.

Q. And what time was the telephone call made by Mr. Sanford? A. It was some time in the afternoon.

What hour I don't know.

Q. You don't know at the—you don't know at what time it was made, except that it was in the afternoon; is that right? A. I know it was in the afternoon. 1850

Q. Did Mr. Sanford call the agency directly, or did he call anyone else? A. He called the agency directly.

Q. He called the agency directly? A. Yes.

Q. Did you know the telephone number, or did you look it up? A. He must have known it.

Q. You were there at the time? A. Yes.

Q. And he didn't look it up?

He took up the telephone and called? [777] A. He had a card.

Q. He had a card? A. Yes.

Q. Do you know anything about the card? A. No. 1851

Q. You saw the card, though, did you? A. Yes. He had the card in his hand; it may have been a card, or it may have been a slip.

Trial Examiner Korey: Was Captain Richter in the plant at the time?

The Witness: He was in the plant; whether he was
1852 in the office, I couldn't say.

Q. (By Mr. Graham) So, as I understand it—I would like to have this quite clear—that according to your recollection the telegram was received on the 16th of July, and it wasn't until about 2 days later that the employees began raising the issue of whom they should have to represent them, and Mr. Dorsey was spoken to by some of the employees in that connection; is that correct?

Mr. Mann: Just a minute. I want to interpose an
1853 objection into this testimony for this reason:

Whatever happened there at that time, Mr. Examiner, I think the evidence is clear to everybody—not only from the Board's case, but also on this witness' direct examination yesterday—that that thing was closed. It was cancelled; [778] it was destroyed.

Whatever was done there terminated, then, two or three days after it was done.

If that is the fact, why should we waste our time on that, because you can't—I don't assume you will make a finding on something that does not exist. It is not in the case any more.

1854 Mr. Graham: For the record, at this time, I want to make it quite clear—why waste time on that? It is not in the case.

Mr. Graham: I would say that up until the present time my examination has been much shorter than Counsel's. I am taking the liberty of cross examination.

Trial Examiner Korey: As a matter of clearing some of that up for the record, I will allow it. 1855

Mr. Graham: Will you read the question, please?

(The reporter thereupon read the last question.)

The Witness: It is hard for me to say.

I would say if Mr. Dorsey had spoken to me—if they had spoken to me, I probably could remember, but when they spoke to Mr. Dorsey, it is something that didn't make an impression on my mind.

It may have been a couple of days later or five days later; I don't remember. 1856

Trial Examiner Korey: You may tell us all you remember.

[779] The Witness: I don't remember.

Q. (By Mr. Graham) Now, as you have stated in your testimony, there had been no labor problems or issues in the plant up until the time the telegram was received— A. Does that complete the question?

Q. No. And then that the telegram was received on or about the 16th of July, and that as far as you know there was still no question of whether or not the employees were satisfied; whether or not they wanted to organize a union— and that, sir, had been brought to your attention, and still the same day that this telegram was received, a plant conference was called; is that a pure coincidence? A. No. I told you why we called the plant conference. 1857

We wanted our employees to speak up, if there was any dissatisfaction—if they were in the process of organizing a union.

If they had not given their bargaining rights to an outside
858 union, we wanted them to feel that they had a perfect right to do it in the open; not furtively.

That was the purpose of that conference—I wouldn't say a conference; it was an address. Let's call it a meeting. Would that be satisfactory?

Q. A meeting? A. Yes.

[780] Q. Yes.

The purpose of the meeting, did it arise directly from the telegram? A. It was a direct result of the telegram.

Q. Now, there has been testimony to the effect that con-
859 fusion arose as a result of the name of this union.

That, I believe, you had testified yourself, that there was some confusion? A. I have.

Q. I would like to ask you just what you did to clear up that confusion.

Whom did you call? What did you do to straighten it out? A. We felt that it wasn't our duty to clear up the confusion; that if the union was a bona fide union, they undoubtedly would want to clear up any confusion themselves, that they would come in and produce definite proof that they had the Labor Board to verify the fact that they were the bargaining agent.

860 We were very busy men at the time and felt it wasn't our duty to adduce proof that they were the bargaining agent; it was their duties.

Q. So you took no steps to clear up the ambiguity of the union? A. No.

[781] Q. When the union first appeared for the conference, did you ask the representative of the union to clear up that problem? A. We certainly did.

Q. Were you shown a card? A. We were shown a card.

Q. Did the card contain both of the forms in which th 1861
union is represented to be on its face? A Well, yes—

Trial Examiner Korey: Let the record speak for itself. That is Respondent's Exhibit No. 6.

Mr. Graham: Very well.

Q. (By Mr. Graham) Now, as I understand your testimony, Mr. Sanford asked Mr. Galvin in the conference on the 20th day of July to prove whether or not he was a representative of the union, affiliated with the American Federation of Labor, or with the Committee for Industrial Organization; 1862
is that correct? A. That was correct.

Q. And that Mr. Galvin presented some proof which was not entirely satisfactory to him; is that correct? A. I wouldn't consider it proof of any kind.

He didn't present any proof; he presented card that we didn't consider satisfactory; neither would anyone else so consider it.

[782] Q. I should like to ask you what difference it made to the company whether Galvin represented the C. I. O. or the American Federation of Labor? A. Not one whit.

Q. Why did you go into the question? A. At that time we looked up to see whether they were really a legitimate union, 1863
but after they left we concluded why should we go into that problem?

Q. Was there any question which you asked Galvin which he didn't answer as to how you could verify his connections? A. He volunteered the information how we could verify his connections.

He said, "Call up William Green, and ask him about Wil-

liam Galvin," or call up some other union man, whose name
1864 I didn't retain, asking him about William Galvin, and I said, "Why should we ask anybody? Have you gone to the Labor Board to get credentials?"

That is the point where he said what the Labor Board does is immaterial.

Q. You asked him whether he had gone to the Labor Board to get credentials; is that correct? A. He said, "Why don't you go to the Labor Board to get my credentials?"

Q. You asked him to go to the Labor Board to get credentials after this conference had begun? [783] A. After he had still refused to identify himself properly.

1865 Q. What had he refused to do? A. He refused to acknowledge the signed cards of our employees.

Q. Prior to this conference? A. During this conference.

Q. This conversation related to whether he was affiliated with the C. I. O., or the A. F. of L.? A. That was later, of course.

Whether he was a C. I. O. or an A. F. of L. affiliate was in the early part of the conference.

Q. So the question of applications had been reached at this time? A. No.

Q. Before the question of applications had been raised, did Mr. Galvin try to give any evidence which you might say
1866 he had as to whether or not he was in the A. F. of L. or the C. I. O.? A. At that very point, he, as I say, presented a card, but no other proof.

Q. And it was later that you asked him to go to the Labor Board? A. It was during the conversation—at that very spot in the conference.

[784] Q. Did Mr. Galvin show you anything else to indicate his connection with the American Federation of Labor

or the Committee for Industrial Organization? A. He had some sort of a letter—I think it was on a bakery and confectionery—I wouldn't say that; I didn't take particular note of it.

He had a letter addressed to him, I believe, at a hotel, but that, of course, we couldn't consider anything. Anyone could have a letter.

Q. Did he show you a copy of the Baker's Journal, containing his name? A. He showed me some little magazine.

It looked like something turned out in a neighborhood.

That was one of the things that made me particularly suspicious; this paper didn't look bona fide to me.

He showed us an article in which his name was mentioned at some length.

Q. This suspicious-looking document—you didn't refer to that in your direct examination—did it actually make you feel suspicious of Mr. Galvin? A. It did me.

Trial Examiner Korey: Off the record.

(There was a short discussion off the record.)

Trial Examiner Korey: We will recess for five minutes, gentlemen.

[785] (Whereupon a recess was taken for five minutes after which time the following proceedings were had.)

Trial Examiner Korey: Gentlemen, you may now proceed.

Q. (By Mr. Graham) In the conference held with the union in the plant on the 20th of July—when did that con-

ference start? A. Some time after ten, I should think, between 10:00 and 10:30 some time.

Q. In the conference held that afternoon with the employees, did Mr. Sanford say, "Two lovely gentlemen have been in to see me this morning;" or something to that effect, and, also, "No one from your shop has ever approached me"; were those his words? A. Whether or not it was at that time or not?

He did use those words, "Two lovely gentlemen," and, as I say, I concluded it was facetious; whether it was that day or not, I don't know.

I know he did use at some time and some place—not "Two very lovely gentlemen," but "Two very nice gentlemen."

Q. Did he also say, "No one from your shop has ever approached me in any way in connection with organizing"? A. Approach him?

Q. Yes.

Didn't he say something like that? A. No. I don't think he expressed it that way; I think [786] he said he never had any intimation that anyone was dissatisfied with working conditions.

Q. And he didn't say, as far as you know, that no one from the shop had ever approached him? A. Those words don't stay with me; I can't recall.

Q. Now, that wasn't brought out? A. No, I don't recall that at all.

Q. Now, at this conference, when he used the words, "Very nice gentlemen"— A. Yes.

Q. (Continuing)—the conference on the 20th of July, did he ask the employees whether they wished to be represented by this union that had approached him? A. No.

Q. He didn't ask them that at all? A. He didn't ask them that at all; we felt that it was none of our business. 187

Q. Did he say to the employees that he had addressed a few remarks to them on a previous occasion? A. When was this?

Q. On the 20th—July 20th, did he say he had addressed a few remarks to the employees on a previous occasion, apparently referring to the 16th of July, and did he also say on the 20th that apparently his words had not been clear, and that apparently his employees had not understood him? [787] A. In substance, I believe something like that.

Q. Now, what had occurred between the 16th and 20th to indicate to Mr. Sanford that the employees had not understood what he had said on the 16th? A. One boy—the elevator man—I think his name is Torrence—came down to me and said he wasn't clear what everything was all about, so I conveyed that information to Sanford. 187

I said, "Apparently they are still in the dark as to what their rights are."

Q. And because an elevator boy told you he wasn't clear as to what this thing was all about, Sanford called another conference of the employees? A. Yes.

Mr. Mann: I object; he didn't call another conference. 187

The Witness: Not another conference.

Q. (By Mr. Graham) Sanford asked Dorsey to gather a certain number of employees together; is that your understanding? A. That is right.

Q. And that was because an elevator boy had told him he was still in the dark.

Was this elevator boy who told you that included in that
1876 group? A. I couldn't say, in the fourteen or twenty, or however [788] many there were there, whether he was there or not.

Q. You don't know how many there were? A. I should think some place between fifteen, eighteen or twenty; it was a goodly group.

Q. How was that group selected? A. I understand from Dorsey that he picked the people whom he figures would be the most articulate and understand; they would be the best apt to be able to carry back to their fellow-workers what they had heard.

1877 Q. And Dorsey told you that is how he selected the group, is that it? A. That is correct.

Q. Now, do you know who told Dorsey to select the group? A. He was told by Mr.—

Mr. Mann: Just a moment. I object to that question, because, you see, this is not an issue in this case. It is something upon which no findings could possibly be made, because all the witnesses agree that whatever happened there between the 16th or the 18th or the 20th, that a paper was signed with names scratched out—that thing terminated and became con-
1878 cluded at that point, and was never heard of since.

Why go into that?

In other words, I assume that the only evidence that is material in a matter like this, is evidence upon which [789] the Examiner can make a finding.

You can't make a finding on something that does not exist any more.

Trial Examiner Korey: We do like to have, in order to make our findings, the facts as to the Labor Relations Acts and what occurred with regard to the labor relations. I will allow it and you may have your exception. 1871

(The last question was read.)

The Witness: I believe he was told; Mr. Sanford told him to select some people that would understand, whose mentality was such that they would understand things that they said, and be able to absorb.

1888

Q. (By Mr. Graham) When you say you believe that, you mean you are not sure? A. I can say that I am sure.

Trial Examiner Korey: In order to clear the record.

The elevator boy told him he was still in the dark—dark about what?

The Witness: As to all the remarks that Mr. Sanford made up there the other day.

He said, "I don't know just what it all about; and I came down and I thought I might ask you."

Trial Examiner Korey: All right. 1889

Mr. Mann: Of course, that is not a violation under the Act, because there is a provision there which says employees [790] may confer with the employers.

Trial Examiner Korey: I am not saying that; I am just trying to clear the record.

Q. (By Mr. Graham) In the conference on the 16th of July, did Mr. Sanford talk to the employees from memory—

simply without reference to any notes of any sort? A. He
1882 had notes, yes.

Q. Were those notes in the form of a prepared statement? A. Yes.

Q. By whom was that statement prepared, by you? A. We had—we all had a hand in the phrasing of it.

I would say by all—Mr. Sanford and myself and Carpenter.

Q. I would like to ask you—I withdraw that.

In the discussion on the 20th you have testified there was a certain amount of discussion of things that might be done; is that correct? A. Certain amount. The principal discussion was, was there dissatisfaction in the plant; whether
1883 the complaints they had to register—it was at that very point that Mr. Sanford—

Mr. Mann: Keep your voice up, Mr. Healey.

The Witness: The principal discussion was, was there dissatisfaction? Who was dissatisfied, and why?

Q. (By Mr. Graham) When you say in your direct examination that there was a discussion of the things that might be [791] done, to what things did you refer?

What things were brought out in this conference that might be done? A. I don't quite get that question.

1884 Q. The question is this: In your direct examination you stated that in this conference held on the 20th of July, there was discussion of the things that the company might do for the employees? A. It was an informal discussion between Sanford, Carpenter, Smiley, and myself.

They recited the complaints that they had, and one of us turned to one of the others and would say, "Can we do this, or that for them?"

"I really think that there was justice—there is justice to some of their kicks." 1889

Carpenter would inject himself right there and say that perhaps we had better do something about giving them a vacation.

"I felt that way for a long time" said Carpenter.

Sanford would remark something about something else. It was a general discussion between our officials.

Q. There was a statement that one week's vacation might be possible; is that correct? A. That is right.

Q. Was it also said that a five per cent increase in [792] salary might be granted? A. Carpenter said something to 1889 Sanford, "What could you do for them in the way of an increase in pay?" and he said, "Well, say, as I see it, the figure as we have it, a five per cent increase is about all I would be willing to consider."

Q. So that there were statements both that the company could perhaps grant one week's vacation with pay, and a five per cent increase in wages? A. As I say, informally.

Q. Was there anything else that the company said at that time, that it might be announced in regard to the payment for overtime? A. I don't recall that.

Q. You don't recall that? A. No; there may and may not.

Q. Was there anything as to what the company might do 1889 as regards holidays; the payment for holidays? A. I think definitely not.

Q. You think not? A. No.

Q. You don't recall whether there was any discussion? A. To my recollection, I would say definitely no.

Q. Now, your statement was, I believe, that on the 16th of July, Mr. Sanford read from a paper which had been

prepared; is that correct? [793] A. The 16th? No—oh, yes, at the informal gathering upstairs, yes, he read from a paper.

Q. On the 20th of July, was there a similar paper—not the same one, of course, but some similar one? A. He had in front of him notes.

Q. And was that similar? Had it been prepared by the representatives of the company? A. No. He had jotted down notes that he had considered important; things that he felt he wanted to remember—his thoughts and facts.

He had a paper of notes in front of him.

Trial Examiner Korey: You say the 20th of July. What group are you referring to?

Mr. Graham: The fourteen.

The Witness: The group that came down to the office; as I say, he had notes in front of him there, of the various things he felt he should have in mind—marshal his thoughts.

Q. (By Mr. Graham) He read from these notes in marshaling his thoughts, if you remember correctly? A. On occasion, and other times he would speak extemporaneously.

Q. In the conference on the 29th—the conference held with the union in the plant—Mr. Sanford again had a paper drawn up, did he not, from which he read? A. That is right.

[794] Q. You have stated during your previous testimony that the purpose of having these papers drawn up, and having things in writing, was to protect the company, so that everything would be clearly understood? A. That is correct.

Q. Is that correct? A. That is correct.

Q. You mentioned, I believe, that the purpose of the com-

pany was to have these things prepared, because, if I recall your exact words correctly, "you were skating on thin ice" and you wanted to be sure that you were being protected in case any subsequent case would arise? A. That is correct.

Q. Correct me if I am wrong. A. That is correct.

Q. Now, the protection which you would get from having written evidence of that sort, in a subsequent place—a subsequent case which might arise—how would you have the protection—how could a written paper protect you in a subsequent case? A. We would like to use it to refresh our minds, as I am doing here, two or three months later.

Q. To refresh your minds? A. Yes. I would have a more clear recollection of everything that transpired that day.

[795] What happened to this paper that was used on the 29th of July? A. The 29th of July?

Q. Yes. When did you see it last? A. I haven't seen it, I think, for eight weeks; not for eight weeks.

Q. Not for eight weeks? A. No.

Q. When did you last see the notes that Mr. Sanford had in the conference on the 20th? A. Some time during the strike I saw it; after that I did not.

Q. How about the paper from which Mr. Sanford read on the 16th? A. I am not quite sure.

Q. So that you haven't seen any of these papers in the last month or so? A. Not in the last month, no, but I had memorized everything on them.

Q. You had? A. Not word for word, but the gist—the substance of the facts.

[796] Q. You don't remember the exact phraseology, though? A. In certain spots. I couldn't possibly attempt to memorize the papers in toto.

Q. In the conference with the union on the twenty-ninth,

what was said about the Brooklyn Chamber of Commerce
894 that wasn't supposed to be covered in your direct examination.

Mr. Mann: I object to that as being immaterial.

Trial Examiner Korey: It is part of the conference, of what was said; he is asking him what was said about it.

Mr. Mann: Exception.

Mr. Graham: That conference is fully analyzed in the—

Trial Examiner Korey: I will allow it. I wish coun-
895 sel would not discuss these motions and objections when the ruling is made.

Q. (By Mr. Graham) What was said? A. Galvin said he recognized the secretary—there is something in there he had issued in the Brooklyn Chamber of Commerce.

I think I interrupted to say that that was quite likely, but the thing was said—what it was I can't possibly recall—but it was quite likely, as every business house was—had the same idea in mind in that respect. What the subject was, I don't know, but it was reminiscent, said Galvin, of something he had heard before; it was prepared by the Brooklyn
896 Chamber of Commerce.

[797] Q. Did you have any connection with the Brooklyn Chamber of Commerce during this case? A. We had been members of the Brooklyn Chamber of Commerce for six or ten years.

Q. Did you have any connection with them, with reference to this case, during any time? A. No.

Mr. Mann: I object to that as being very vague and indefinite.

Mr. Graham: I would like to know whether Mr. Healey himself, or any other officer of the company, ever spoke to Mr. Balleisen about this case, or ever spoke to any other member of the Brooklyn Chamber of Commerce in his official capacity about this case.

Mr. Mann: I object to it as being immaterial, whether he did or not.

Trial Examiner Korey: I will allow it.

Mr. Mann: Exception.

The Witness: I have a belief that Mr. Sanford had spoken to Balleisen. He went up to the Brooklyn Chamber of Commerce at times, with many many questions. He is a member of the transportation committee up there, and I have no doubt, he did speak to Balleisen. I know I did, in connection with another. I did.

Q. (By Mr. Graham) Did you speak to Mr. Balleisen your-[798] self, in connection with this? A. No. Not in connection with this matter, no.

Q. Do you know when Mr. Sanford went to see Mr. Balleisen? A. No, but I should think it was immediately—around the time of these fellows, I should think.

Trial Examiner Korey: Who is Mr. Balleisen?

Mr. Graham: Secretary of the Brooklyn Chamber of Commerce.

Trial Examiner Korey: What is his position?

The Witness: He is connected with the Brooklyn Chamber of Commerce.

Mr. Mann: He is industrial something or other; I don't know.

Mr. Graham: I believe his office is one which puts him in charge of Labor Relations Board in Brooklyn, as far as—

Trial Examiner Korey: All right; I just wanted to know what he is or who he is.

Q. (By Mr. Graham) There has been some conflict as to this paper which was produced on the twenty-first of July, and which was taken by certain selected employees in the presence of Mr. Dorsey, to be kept for signatures.

Mr. Mann: Just a minute; in the first place, I think the question is wrong, because it is not the twenty-first of July at all. My recollection of that paper is [799] that it lost its identity before the twenty-first of July.

Trial Examiner Korey: Well, do you remember the date, Mr. Healey—that paper when the committee and the different employees signed and scratched their names off—what date that was?

The Witness: No, it is about that time; I don't know; I can't possibly say.

Mr. Graham: Do you recall the date of this conference of the fourteen people, or this meeting of the fourteen people, in Mr. Sanford's office?

Trial Examiner Korey: He said it was on the twentieth.

The Witness: I said it was on the twentieth.

Trial Examiner Korey: The afternoon of the twentieth?

The Witness: Yes.

Q. (By Mr. Graham) Isn't it true, that this paper which I have just referred to, which was taken around for signatures, was taken around the following day? A. I cannot say. That paper has made no particular impression upon my mind. My testimony on the paper would be—

Trial Examiner Korey: Give us approximately.

The Witness: A day or two; it may have been the same afternoon.

Trial Examiner Korey: I believed that you testified [800] previously, it was a day or two after. Mark the records.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record, proceed.

Q. (By Mr. Graham) Now, I would like to ask you, who gave this paper to you when it finally reached your hands, entered the signatures and the crossing out? A. Dorsey, I believe.

Q. Dorsey gave it to you? A. Yes.

Q. Do you recall when he gave it to you? A. It was a day or two after the twentieth, I believe—twentieth, twenty-first or twenty-second.

Q. How did Dorsey get it? A. How he got it is beyond me. I imagine the boys who had it in their possession said, "We can't get any place with it. Here it is."

Q. Now, you have stated during this cross examination—I believe this is correct—that the moving spirit for holding the conference on the sixteenth was because, on that date a

telegram had been delivered, which indicated that there was a possible feeling in the plant, of some persons who might be discontented, and they might wish to join the union, so you hold a conference to open the matter and explain it right to them?

Mr. Mann: Just a minute—

[801] Mr. Graham: I object; this is not a question; it is just what I understood.

Mr. Mann: Let's hear it straight. There is a paper which has on it the fourteenth; it is not the sixteenth; the telegram was dated the fourteenth.

The Witness: I said I have no knowledge.

Mr. Mann: We are trying to get the truth.

Trial Examiner Korey: I know we are trying to get the truth. The witness is telling the truth; the conference might have been called one or two days after the telegram.

Mr. Mann: He said the telegram was received on the sixteenth. He is telling an error as to that.

The Witness: I think when I said I had it, it didn't seem possible. It was more likely the sixteenth. When I looked at that wire dated the fourteenth, I believe that my recollection must be wrong.

Trial Examiner Korey: When was that meeting called, just to clear the record. When was the meeting called after the receipt of the telegram of July the fourteenth.

Mr. Graham: I suggest that you refer to this paper (Handing paper to witness).

Trial Examiner Korey: Refer this Exhibit No. 1.

The Witness: I believe it was the following day.

Trial Examiner Korey: Making it the fifteenth?

The Witness: It must have come in on the fifteenth.

[802] Trial Examiner Korey: We are not asking you that.

The Witness: The telegram must have come in on the fifteenth.

Mr. Mann: It is dated the fourteenth.

Trial Examiner Korey: The telegram is dated the fourteenth.

The Witness: It could not have come in on the fourteenth.

Q. (By Mr. Graham) It arrived the next morning, according to your present recollection?

Trial Examiner Korey: They may have received it the fifteenth.

The Witness: My knowledge on that date—I couldn't say, it would be a wild guess.

Mr. Graham: I am not trying to ascertain the date of the receipt of the telegram; I simply wish to refer to this in introducing the next question. It may aid that question.

Q. (By Mr. Graham) I believe you have stated that the cause for this meeting which was held on the sixteenth, was the telegram which had been delivered almost immediately prior thereto—whether it was the fifteenth or the sixteenth, I don't care. I would like to call your attention to the fact that on the morning of the twentieth, representatives of the union called on the plant, and on the afternoon [803] of

the twentieth another conference was held, and I would like
912 to ask you whether there is no similar connection between those two events, as that which we have just described, existed as to the two prior events. A. It is rather an involved question.

Trial Examiner Korey: Break it down.

Q. (By Mr. Graham) Didn't the meeting on the morning of the twentieth with the union representatives, have something to do with the calling of the employees that same afternoon in the plant? A. Not necessarily.

913 Q. But actually? A. Since that first day we had been trying to find out whether there was discontentment in the plant. That had crept up all along.

Q. What efforts had you made? A. What?

Q. What efforts had you made? I am trying to find out about the discontent. A. The chief effort was to ask them. To find out—to find out if there was any.

Q. What did you do? A. Made inquiry.

Q. Did you call certain employees down in that respect? A. Yes.

[801] Q. Do you recall any individual whom you called down? A. I can't say. There was such a group—it would
914 be hard to say whom we called down; we had a group.

Q. You did ask individuals down into the office; is that correct? That is what you said? A. Yes. Mr. Dorsey asked individuals down.

Q. And he interviewed them in your presence? A. Oh, always, no.

Mr. Mann: I want to record an objection to this whole line of testimony, because it is immaterial.

Mr. Examiner. The evidence shows that on July twenty-ninth—even though he tells you now, and he told you on his direct and on his cross, that he didn't know whether this was a bonafide union.

There was this duplicacy of names of the union.

There was no affirmative proof presented, that it was the bargaining agent. If, notwithstanding that fact, on July twenty-eighth they met over in McCann's office, and when McCann said to him, "I am satisfied that they are the bargaining agents," they went back and bargained on July twenty-ninth; so I object to the wasting of a lot of time on what they did the sixteenth, the eighteenth, the twentieth, or the twenty-first, or any other date.

It was all washed up for what happened on the twenty-ninth, then they sat down and talked to these men. I don't see the materiality. If I have to submit a brief to you, I [805] am going to emphasize that very, very strongly.

Trial Examiner Korey: I will allow it.

Mr. Mann: Exception. I would say, in this connection, that it would be very material if they had not bargained with them later. The question is here, was there bargaining on the twenty-ninth? If there was, what difference does it make—

Trial Examiner Korey: The Board contends and the union contends that there was no bargaining, and all this is material. We will not discuss it any further.

Mr. Mann: There was something on the twenty-ninth; I don't know if you want to hold us to what it was.

Trial Examiner Korey: That is their contention; they fully brought their facts in. I don't know what they expect to do yet. It is part of the issue; we will allow it.

Mr. Mann: I except.

Q. (By Mr. Graham) Do you know who was present when the employees were called down and interviewed?

Mr. Mann: I object to this on the same grounds; it is immaterial, and if Mr. Graham pursues this inquiry—I don't want to make an objection to each question.

Trial Examiner Korey: Why not make a general objection to this line, and you may have exceptions.

Mr. Mann: All right.

[806] Q. (By Mr. Graham) You have said so far, that during the period between sixteenth and the twentieth, employees had been called down in to the office from time to time, to find out whether there was dissatisfaction existing. A. I never made any such statement; I said that on the twentieth Dorsey gathered a representative group from the factory, those that he figured would understand. Nothing of that sort on the twentieth. They had not been tickling during the week, or any other time.

He undoubtedly didn't bring a delegation with him as he selected them; he was alone; the chances are.

Q. Perhaps I misunderstood you.

If there had not been such conference during the period between the sixteenth and the twentieth, which I thought you mentioned as being the reason for calling the conference

on the twentieth, then I would like to return to my original question; Was there any connection between the facts of 1921
the union's having a conference in the morning, and the plant calling a conference or meeting, or whatever you chose to call it, on the afternoon of the twentieth? A. I don't know that ther was any direct connection.

Q. What occurred prior to the twentieth? A. All these things had been developing for a week.

Q. The conference held on the sixteenth? A. The conference held on the sixteenth, circulation of [807] this paper —everything had transpired in a week.

Q. Had a paper circulated—

1922

Mr. Mann: You might let him finish his answer.

The Witness: Everything transpired in a week, leading up to this second meeting on the twentieth.

Q. (By Mr. Graham) Had this paper been circulated prior to the twentieth? A. That was something that I don't know. The paper was circulated between the employees—when it circulated, or how, or anything else is something I couldn't be qualified to say.

Q. Passing the question of when this paper was circulated, I would like to know what the contents of the paper actually was.

1923

Mr. Mann: I object to it as immaterial, because it purely appears from the evidence of all parties that whatever was in the paper, was by mutual consent cancelled, and when something is cancelled by mutual consent, it is the end of it. What difference does it make what was in it?

Trial Examiner Korey: We have taken his testi-
1924 mony as to that, I should think.

The Witness: I will answer that by saying that that paper was so unimportant to me, that I didn't attempt to memorize any part of it. I couldn't say what was in it. [808] I didn't consider it of sufficient importance to memorize anything in it, and I am not qualified to enter it.

Q. Do you know why Mr. Dorsey gave you this paper, if you had no interest in it? And you say it was a matter of no importance?

1925 Mr. Mann: Same objection on the same question—on the same grounds.

Trial Examiner Korey: Same ruling.

The Witness: He undoubtedly selected me as I do most of the active work around the place.

Q. (By Mr. Graham) And you say now that you have no recollection at all as to the contents of that paper? A. No.

Q. Would it refresh your recollection if I told you the paper contained reference to the five percent increase in pay?

1926 Mr. Mann: Objection on the grounds that it is immaterial.

Trial Examiner Korey: Same ruling.

The Witness: A five percent increase in wages—that was comical. I don't believe anything like that was in it.

Q. (By Mr. Graham) Would it refresh your recollection if I told you that the paper contained a statement that the outside union should be superseded by the signing of [809] this paper, when a designation to it of the signing of the signatories?

Mr. Mann: Same objection.

Trial Examiner Korey: Same ruling.

The Witness: No. I say, anything said about that paper, I would have to stretch my imagination, because it didn't make any impression on me, but Dorsey handed it to me, I saw a lot of names on it, and I tore it up and threw it away. It was nothing, it didn't interest me, I was too busy at the time.

Q. (By Mr. Graham) And you have no recollection as to whether that paper contained a reference to one week's vacation with pay? A. I am reasonably sure it didn't.

Q. I thought you had no recollection at all as to the contents? A. No, I didn't say that, but it didn't make sufficient impression for these things to be imprinted on me, but I would respectfully say there was no mention of a five percent, or anything else on it.

Q. You are sure it wasn't in it? A. I would take an oath.

Q. About the one week's vacation? A. As I recall it, I didn't memorize it; I didn't attempt to. The gist of it was some of them appointed a certain [810] group to represent them. There was nothing about what they were to get, or anything else.

They simply called a certain group. That was the tenor of the paper. There is nothing in there about what they got, or wouldn't get, or anything else. I know that, but to tell

you the wording of this, it would be ridiculous for me to try.

930 Q. You say that you are sure that there was no reference to the five percent increase in wages? A. I would say that certainly.

Q. And you are sure there was no reference to the one week's vacation with pay, as to this reference you have made that you believe the paper contained? A. Yes.

Q. Some names indicated by the signatory were by designation a committee to represent them. I would like to ask you, further, was it said in that paper that such committee would supersede the union, if designated by such signatures?

931 Mr. Mann: I object to it for the reason that it developed that a few days later that whatever was in that paper was cancelled and the management, on the twenty-ninth of July, sat down and bargained with the representatives of this union.

Trial Examiner Korey: I overrule it.—The same ruling.

[811] The Witness: As I recall, the paper simply said that the committee was to represent them, and they were to date from that day—whether they were to supersede or not, I couldn't say that.

But I know that the paper was supposed to have
932 something in connection with their getting together to select their own bargaining committee, and the thing fell through. The bargaining committee was to be of that date. Whether it superseded anything else, I don't know.

Q. (By Mr. Graham) Do you recall whether or not this was one sheet of paper, or several sheets of paper? A. I think there were two or three sheets attached.

Q. Two or three sheets attached? A. Yes.

Q. And the first was a written sheet and the rest were for signatures? A. No. I think on the first page there were some names scratched out and some left on, and there was some printing at the top and names on the sides, and names on the bottom and some of them scratched off and others erased —it was a scratchy paper.

Q. And several sheets of legal paper pasted together? A. White paper, I don't know whether it was legal paper, what type paper—plain sheets.

Q. Now you have testified that in this conference on the [812] twentieth of July, and that also in the conference on the twenty-ninth of July, that Mr. Bicariello was present; is that correct? A. I believe so.

Q. And that Mr. Bicariello had with him a bag? A. At one of the meetings, the meeting of July twentieth he had with him a bag.

Q. Did you have any idea what this bag contained? A. No. Except that from remarks of Galvin that it contained application cards, but we didn't look in the bag, and I have not the slightest idea—he may have had a hat in it.

Q. From what Mr. Galvin said, you assumed that the bag contained application cards? A. I am taking his sayso, yes.

Q. Do you say that in spite of the fact that Mr. Bicariello on both of these occasions brought with him a bag— A. I don't think on both occasions; I said at the meeting of July 20.

Q. Didn't the bag appear on the twenty-ninth? A. Yes. But I don't know whether he had the bag with him, and I never had any time to notice whether he had a bag on the twenty-ninth.

Q. If you were told that he had the bag on the twenty-ninth
1936 —wouldn't you consider it unusual for Mr. Bicariello [813] to appear at both conferences with the applications in a bag, and at both times refuse to show you any of those applications? A. That is a hypothetical case—

Mr. Mann: I object to the tone of the question; it is purely argumentative, wasn't to be considered.

Trial Examiner Korey: Yes, I will sustain that objection.

Q. (By Mr. Graham) In the conference on the twentieth,
1937 didn't any representative of the union give you a blank copy of an application which the union said they had in the bag, or didn't they? A. They did not give us anything in the way of a blank application. They showed us a blue card which they said was an application card—typewritten.

Q. Has your company, ever had, in its possession a blank copy of applications for this union? A. At no time.

Q. You have testified that in the conference on the twenty-ninth of July, Mr. Sanford said that he would recognize the union as the sole bargaining agent. I would like to ask you if that is correct? A. That is correct.

Q. Now, you have also testified that Mr. Sanford pointed
1938 out to the union, that he must at the same time, recognize [814] and act upon the fact that the union did not have all of the employees as members. A. I never said anything to that effect. He said he realizes at the same time—not recognize or act,—he realizes at the same time that they do not represent all of our employees.

At this meeting of the Board, they had said they did not represent our foreman or anybody in a supervisory capacity, but he didn't say he realized and act on the fact.

Q. If the union did represent a majority what possible importance was there to the fact that the union did not represent all? A. No importance. 1939

Mr. Mann: That I object to—

Trial Examiner Korey: Well, the answer is there.

Q. (By Mr. Graham) No importance at all? A. No importance at all. It had one significance; the first paragraph of the contract read, "We act as no collective bargaining agents for all the employees of National Licorice Company."

Trial Examiner Korey: When you say "contract," you mean the demand that was left on the twentieth? 1940

The Witness: Yes.

Mr. Mann: Respondent's Exhibit No. 2.

The Witness: It said in there, "We are collective [815] bargaining agents for all the employees of the National Licorice Company." I think if you will refer to that, you will find that in there, and mention had been made at the Board meeting, that they did not represent all the employees of the company; they excluded our supervisory workers, and we wanted to have a matter of this kind cleared up, when it came to the time of writing the contract. 1941

Q. And Mr. Sanford's was directed only to the fact that twenty-seven of the employees were not eligible for membership? A. Yes, according to the union rules. He wanted to have that clearly understood.

Q. The first clause of this agreement reads that the union is the sole collective bargaining agent for the employees of

the company who are not in the office or in a supervisory
42 capacity.

That would indicate fairly clearly, wouldn't it, that Mr. Sanford could serve no purpose in pointing out that the union did not represent those employees, as it is stated on the agreement itself, they didn't claim to represent. A. Yes it could, because we figured when it came to the final time of entering into a final agreement with this union, we would have it very clearly specified that they would exclude, in addition to office workers, our drivers, our shipping room employees, and we wanted to bring out [816] when we did finally come to enter into a final agreement with them
43 that that clause should be more carefully worded.

Q. When Mr. Sanford made this remark to the representatives of the union, did he say that the shipping room employees— A. No. He didn't enlarge on it. In fact, he involved himself in an argument the minute he said it.

Q. So that Mr. Sanford's prime purpose in making that remark was to refer to cards which he didn't actually mention—shipping employees and truckmen? A. His sole purpose was that when we finally changed to an agreement with the union, we would like to have that paragraph clarified so that we knew just what it meant.

Q. Well, now, when Mr. Sanford was negotiating with the
44 union, didn't he state that he wouldn't sign a contract with the union, but would come to terms with the union, and then ask the union to get the individual employees to sign contracts with the company? A. No. That was far from what he said.

Q. He didn't say that? A. No. There was nothing said about individual contracts with employees. At no time during the conference.

Q. Is the company's present policy, a new policy in that respect? A. Present what?

(The last question was read.)

[817] Mr. Mann: I object to it as immaterial.

Trial Examiner Korey: I will allow it.

The Witness: We have never had any occasion to have a policy. Of necessity, it is to be a new policy. We have never had labor troubles, and any policy which we are operating under now, has to be a new policy.

Q. (By Mr. Graham) I mean now as to the time of the fifteenth of July. A. At any time since our inspection, it has to be no. We have never had anything like that before.

Q. So that you didn't join the conference in the latter part of July, any such policy as you now have; is that correct? A. In respect to what, Mr. Graham?

Q. In respect to individual contracts.

Mr. Mann: I object to the referring of these contracts as individual contracts; they are nothing of the kind.

Mr. Graham: Contracts signed by individuals over that by representatives.

Trial Examiner Korey: And a bargaining committee.

The Witness: But up until then—

Trial Examiner Korey: And a committee.

The Witness: Nothing ever came up of that nature.

Q. (By Mr. Graham) When was that idea adopted?

[818] Mr. Mann: I object to when the idea was adopted. It was no idea, it was the result of something of which we have proof of what happened. It is not an idea.

Trial Examiner Korey: It is cross examination, I will allow it.

Q. (By Mr. Graham) Answer the question. A. It is impossible to say. That may have been in the back of our minds for years. When an idea was evolved, it was a pretty hard thing to define.

Q. So that you may have had this plan in your minds for years? A. We may.

Q. According to your testimony, on the twenty-ninth of July, there was some bargaining—the union had been recognized as the exclusive representative, and according to your testimony, on the twenty-ninth of August, the union had no picket signs, and apparently was not prepared for a strike. Now, why would a union call a strike when it was not in a sound position? A. I didn't say they were not prepared for a strike; I just said they had no picket signs on August second. Whether they were prepared or not—how could I possibly know whether they were prepared?

I said they had no picket signs, on August second, but whether they were prepared is something I don't know.

[819] Trial Examiner Korey: Will you break that question up?

Mr. Graham: Well that is enough.

Trial Examiner Korey: All right.

Q. (By Mr. Graham) Now, in the conference on the twenty-ninth, according to your testimony, Mr. Galvin said, "We

did not come here to hear a lecture read," or words to that effect, and Mr. Sanford then said, "I am not reading a lecture." 1951

Now, I would like to have your understanding; did Mr. Sanford mean that he was not reading or that he was not reading a lecture?

Mr. Mann: Just a moment, after all, he can't possibly testify that Mr. Sanford read what he had in his mind. He can testify as to what Sanford said and what Galvin said, but why ask him to interpret what a man had in his mind.

Trial Examiner Korey: The question referred to a paper that Sanford was reading from; I will allow it. Is that the question, Mr. Graham? 1952

Mr. Graham: Yes.

Mr. Mann: May I have the question read?

(The last question was read.)

Mr. Graham: I would like to reframe the question.

Q. (By Mr. Graham) Did you understand by what Mr. Sanford said, that he meant that he was not reading, or that it was [820] not a lecture? A. My understanding of it was: He meant, reading in the slang, having the slang meaning, that he was not reading the riot act, or that he wasn't laying down a lecture. In that respect, that reading meant laying down a lecture, not that he was not reading a lecture from a paper; that is my impression of what he meant. 1953

Mr. Graham: I see.

1954 Trial Examiner Korey: We will have a five minute recess.

(Whereupon a recess was taken for five minutes, after which time the following proceedings were had:)

Q. (By Mr. Graham) Now, I would like to direct this examination to that prepared statement which Mr. Sanford was reading. Did the statement include the answers of the company's demands of the union?

1955 (The last question was read.)

Trial Examiner Korey: The statement from which Mr. Sanford was reading.

The Witness: Oh, all right, yes.

Q. (By Mr. Graham) In your direct examination, you said that when Mr. Sanford was discussing paragraph three, subdivision A, that he concluded his remarks on that, by saying that when he finished reading the statement, he would give his approval.

[821] How could that be true, if he was reading the proposal at the time? A. He was not reading the proposal at the 1956 time. He was reading their—

Q. Then the statement which he was reading did not include the company's answers to the union's demands; is that correct? A. At its conclusion, after he had finished reading their demands, he read from the same paper—a continuation of the same paper—the proposals.

Q. So that all that he was reading during the first part of the conference, was simply the requests left with him,

by the union? A. He was reading the demands, one by one.

Q. That is all? As he read them, did he make any count of approvals? A. No. He told Galvin that later in the conference he would make all account of approvals, taking paragraph by paragraph in the same fashion.

Q. So that Mr. Sanford read no count of approvals at that time, and did not discuss them at that time, but left them for the discussion when he had finished reading that part of the paper, there could have been no discussion at the company's count of approvals? A. Yes, because when he read the count of approvals, he [822] repeated their demands, but at the time, he was simply reading the union demands, and had not got to his own approvals during that period; there could have been no discussion.

Q. When he finished with the union demands, then he read the count of approvals? A. After which, the discussion arose why we could not meet their demands.

After each paragraph, he would lay his reason why it was impossible to meet with their demands, as drawn by the union in its proposal or demands, or whatever you call it.

Q. And when he completed reading paragraph twelve, which you say they could not meet, and then after each paragraph which proceeded, when he finished reaching the paragraph four which he could meet, he then had said that this paragraph was all right. A. As I said yesterday; "It seems reasonable enough."

Q. So that at the time he was reading from this paper, before he got to the latter section—in my examination, referred to it under two sections, the first section, in which you state, had been simply the unions demands.

Then there was a short intermission— A. There was no intermission.

Q. Referring to when he looked at the count of proposals. A. That came later.

[823] Q. During the reading of the first part—dividing it into two parts—do you know what I mean? A. Divided because it was in the afternoon?

Q. For the purpose of discussing it with you. I wish to divide it in two parts. For that purpose? A. Yes, that is correct. That is why it was divided. That is all right.

Q. When reading the first part of this statement, then, you say now, that he after each paragraph, stated whether or not he would concede to the demands; is that correct? A. Yes, and if he couldn't concede, why.

Q. And if he couldn't concede, why? A. Yes.

Q. Now, this was, then, a statement by Mr. Sanford, as to the cleaning up paragraph by paragraph of what the union had asked him—of Sanford—what the company would do—and the union in the next paragraph, would ask him what he intended to do about it—

The Witness: I think you will have to break up some of these questions, because to keep up with them is beyond me.

Trial Examiner Korey: Break up your questions.

Q. (By Mr. Graham) Mr. Sanford did say, did he not, that he would give the count of proposals when he finished reading the first part of the statement?

[824] Mr. Mann: Just a minute, I object to that, because that is not the testimony; he didn't say that at all.

Trial Examiner Korey: We won't go into that, counsel.

The Witness: You mean, your interpretation of the first part of the conference?

Mr. Graham: I will just glance over my notes, and perhaps that will verify what I am talking about.

Q. (By Mr. Graham) I have here, under your discussion paragraph by paragraph, paragraph three, subdivision A, and then the fact that that paragraph referred to a raise in the wages of women of fifteen cents per hour, and then Galvin states, "You are reading from a paper," and that same paragraph said, when he finished all the paragraphs, "I will give further proposals." That is what I took down at the time you were testifying; is that correct? A. Yes.

Q. So that paragraph did say that he would give his count of approval at the end of the reading of each paragraph, and for each paragraph?

Mr. Mann: That is not so.

Trial Examiner Korey: Wait a minute, Mr. Mann. This is cross examination. You will have plenty of time on redirect.

The Witness: It is awfully hard to keep up with your questions, Mr. Graham. They seem to be so involved. Can [825] you make them a little more explicit?

Mr. Graham: Yes.

Q. (By Mr. Graham) I have written down here your answer to a question from Mr. Mann, quoting Sanford:

"When I finish all the paragraphs, I will give my count of approval."

Now I ask you, if that is correct? A. Yes.

Q. Sanford said that? A. Yes.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Q. (By Mr. Graham) Now, I call your attention to paragraph D, of respondent's Exhibit No. 2—that paragraph stating "No employee shall be transferred—" A. Wait a minute, you haven't turned to the right exhibit—oh, here it is.

(Indicating.)

Q. (Continuing) "shall be transferred, from an hourly basis, to a piece work basis, or a piece work basis to an hourly basis, without the consent of the union."

Now, in referring to the paragraph D in your direct examination, you said that it was transferred from one basis to the other, was incompetable with the business done by the company, it being a national business. [826] A. That isn't a national business.

Q. The nature of the business? A. That is right.

Q. That is my mistake.

Because of the nature of the business, was such a transfer allowed? I would like to have you explain to me just how it would be impractical.

Mr. Mann: Just a minute, I object to that. That is not in issue here. This whole point is whether or not there was bargaining. 1961

Trial Examiner Korey: I will sustain the objection.

Mr. Graham: I would like an exception, because I feel that it is practical to make such a transfer within the company.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Q. (By Mr. Graham) Well, now, this paper from which Mr. Sanford was reading—is that still in existence? A. I couldn't say. 1976

Q. Could you verify whether or not it is still in existence? A. Could I verify it? That is hypothetical, too—whether I could or not.

Q. I mean, when you asked Mr. Sanford to find out? A. Oh, yes.

Q. If you find that it is still in existence, have you [827] any objection to producing it, so that we will understand exactly what happened?

Mr. Mann: I will object to that. I will object to that, because you objected to introducing your papers in evidence. 1979

That is why I object to it.

Trial Examiner Korey: We will cross that bridge, when we get to it.

Q. (By Mr. Mann) Then, as I understand it, you will attempt to find out whether that paper is still existing, and let us know, and we will at that time, discuss whether or not it can be produced.

Can you do that tomorrow morning?

Trial Examiner Korey: As a matter of fact, if necessary to stay a little later this evening, we will do so, if we can possibly get through this hearing today or tonight. I would appreciate it if counsel would cooperate with us so that we could get through it tonight.

We will see later on this afternoon, what more we can get in order to facilitate this hearing.

Mr. Graham: In accordance with that suggestion, would it be advisable for the witness to telephone the company and attempt to ascertain the existence of the paper during the noon recess?

Trial Examiner Korey: Yes.

[828] Q. (By Mr. Graham) Would you do that? A. Yes.

Q. Would it be possible at the same time for you to ascertain whether or not the very imperfect notes which the stenographer took are still in existence, and whether or not, we could have them? A. I am reasonably sure that they have been destroyed. If Mr. Sanford says so, I believe they were.

Mr. Graham: The note book in which the notes were written would probably still be in the stenographer's desk file of note books.

The Witness: No, we don't preserve them.

Mr. Mann: Now, I would say that if they are in

existence, I would personally would object to it, because it is considered by everybody that they are inaccurate.

Trial Examiner Korey: The witness has testified they are not in existence; then we won't have to discuss that any longer.

Mr. Graham: My notes of him also relates to the discussion of the paragraphs in detail, and I presume that it is objectionable for the same reason?

Mr. Mann: One minute, please.

Trial Examiner Korey: Off the record, then.

(There was a discussion off the record.)

Q. (By Mr. Graham) Who prepared the statement from which [829] Mr. Sanford was reading on the twenty-ninth of July? A. It was a joint document: we all gave advice: we all had a hand in phrasing it.

Q. When was it prepared? A. A great part of it was done on the twenty-eighth and ninth, although we had given considerable time to many of the things in it long before that. We prepared those things on the twenty-eighth and twenty-ninth of July.—

Q. Will you give us the names of those who had anything to do with the preparation of the paper, please?

Mr. Mann: It is immaterial; I object to it.

Trial Examiner Korey: Well, he said he helped prepare it.

The Witness: Chiefly—well, Mr. Sanford, Smiley and myself.

Q. And who were the others who participated in the
978 preparation? A. We were the only ones there at the time.

Q. You said chiefly the three of you, and I presume that there were others. A. Chiefly the three of us.

Q. So that only you three had anything to do with the preparation? A. We were the only officials there at the time.

[830] Q. Were there any others there at that time? A. We had a lot of office employees—engaging in the preparation of it.

Q. In your direct examination, according to my notes, you said the first observation of it—was on the second of August,
979 and it was brought to your attention about 12:15; is that correct? A. No. I thought I said shortly before twelve—I thought I said shortly before twelve. The engineer, John Donovan, came into Sanford's office, and said so; that is my recollection of it.

Q. Now, according to your present statement, that the difficulty was first brought to your attention shortly before twelve, you then decided to call Captain Richter—as I recall your testimony.

What time did you call Captain Richter? A. I think it was shortly after—I didn't call him; Mr. Sanford called him, and I believe it was shortly after twelve.

980 Q. Shortly after twelve? A. I am only guessing.

Q. I believe, in your testimony, you testified fairly definite about the exact time when he was called.

Didn't Sanford call him when you were present? A. No. He was in the office at the time, but I wasn't [831] at the telephone when he called him up.

Q. Did you know why he was calling up Captain Richter? A. I knew he called him.

Q. And when he did call him, you knew that it was he that he was calling? A. I wasn't there when he was calling. 198

Q. When did you first learn that he called Captain Richter? A. When I saw Captain Richter.

Q. When was that? A. That was some time between twelve and half past, I should say. I didn't take particular note. There was a great deal of excitement there, and naturally, I don't believe I could qualify to say what time.

Q. Could you say approximately, how long it was after Captain Richter was called, before he arrived?

Mr. Mann: I object to that as being immaterial.

Trial Examiner Korey: The purpose of finding the time— We will allow it. 198

The Witness: I should think, ten minutes.

Q. (By Mr. Graham) So that if he was called shortly after twelve, that he might have arrived, as I believe you have testified, at ten minutes after twelve? A. He might have.

Q. Do you recall whether or not you did testify whether he arrived at 12:10? That is what I have on your testimony? [832] A. That is probably so.—I testified so much in two days, now.

Q. If that is what you said on direct examination, you are sure, then, that that is the time when Captain Richter arrived? A. I couldn't say for sure; it might not be true. 198

Q. A few minutes out, one way or the other? A. I don't know; it was shortly after that time.

Q. When Anderson called Sanford on the morning of August second, did Sanford report to you the gist of the conversation they had with Anderson? A. He did.

Q. And did he refer to you that he had terminated the

conversation by suggesting that Anderson call at 10:30? A. In calling Mr. Sanford on the 'phone, he made an appointment to meet Anderson there at 10:30 Thursday morning. 8 1984

Q. And when Mr. Anderson called him the second time on the 'phone, on the second of August, did Mr. Sanford refer the conversation to you, or did you talk to him yourself? A. No. I didn't talk to him over the 'phone—I didn't talk to him over the 'phone.

Q. Did Sanford tell you of the conversation he had at that time? A. No, not in detail. He just said, "Anderson called him up" and he then turned him over to Captain Richter, who didn't go into the details of the conversation he had [833] with Anderson. 8 1985

Q. And therefore, you don't know whether Anderson called Sanford on that second telephone conversation, but the union had not called the strike? A. No, I couldn't say.

Q. I called your attention to the fact—would you start that please?

Do you have the floor plan of the plant office?

Trial Examiner Korey: It is in evidence. Here it is.

Mr. Graham: What Exhibit is it?

Trial Examiner Korey: It is respondent's Exhibit A.

8 1986

Q. (By Mr. Graham) Now will you please indicate on respondent's Exhibit A to the Examiner, where the employees entered the plant? A. They entered the plant at a door directly opposite—directly underneath this stairway. (Indicating.)

Trial Examiner Korey: And your office entrances is over to the right?

The Witness: Our office would be right under this spot—here. 19
(Indicating.)

Q. (By Mr. Graham) After they entered through that door, what route do they follow going to their dressing room? A. They come up through these stairs (indicating), a [834] fireproof stairs, go through this door here (indicating), punch the time clock. That is located on here (indicating). They cross over to these stairs, go up to the next floor, and cross in to their dressing rooms. They dress, and then they come down to the plant where they are assigned.

Q. And the time clock, which is indicated here (indicating), is on this floor? A. It is on that floor. 19

Q. And it is in the room in which the workers were gathered on the second of August? A. Yes, the floor is one room.

Q. One open room? A. One open space with some boxes scattered here and there.

Q. Now, during the lunch hour, do some of the employees stay in the lunch room and some of them leave the plant? A. Some of them, I believe, do go out.

They sit out in the front and play ball—some of the boys. They go all over the plant. The bulk of them, I believe, go to the lunch room.

Q. Well, now, after the strike, has the same general practice as to the lunch room preserved that they had before—do they now conduct themselves as they did before the strike, during the lunch hour, some of them going to the lunch room, some playing ball— A. I imagine the baseball season is over. They don't do [835] that any more; but they can go anywhere they want, so long as they keep peaceful and are orderly. They can go any place they want during that half hour. 19

Q. So far as you know now, they have their lunch in the
1990 same general fashion and in the same general way? A. As far as I know, there should not be any reason for a change,—that I know.

Q. I would like to ask you whether on your direct testimony you didn't say that approximately nine-tenths of the employees had never been in this room before the second of August. A. No. I said, "Rear of this room." I testified that they came in every day in the week in this room (indicating), and punched the time clock. In my testimony, I said in the rear of the room.

2 1991 Trial Examiner Korey: That is right.

Q. (By Mr. Graham) And the rear of the room is completely visible from the front, isn't it? A. Oh, yes.

Q. Now you related in your direct examination of two trips that you made up to the room where the strikers were gathered; is that correct? A. That is right.

Q. Did you make two trips? A. Yes.

[836] Q. And in your direct examination, you stated that the second and last trip was made shortly after two p. m.; is that right? A. I should think the time about that.

Q. And that at that time you noticed that the employees
1992 were conducting themselves in a hilarious fashion and were smoking; is that correct? A. Yes, that is correct.

Q. And I believe you testified—I would like to have you correct me if I am wrong—that it was partly because of the fact that the employees were smoking where they weren't allowed to smoke, and were acting in a hilarious manner, that it became necessary to call the guards to protect the property of the company. A. That might have been contribut-

ing, but that was—it was really from the fire standpoint. That was one of the dozen very good reasons why we called them out. It was one of a dozen.

Q. I would like to ask you if there are any of these machines in that particular room where they were gathered? A. Machines? Which particular ones?

Q. Which you referred to as being very valuable and which might be damaged easy by the conduct of the— A. No machines—but the building; there are continuous shafts and drops that go from one floor to the other; they [837] go to the very expensive machines, and there are expensive belts.

Q. Was there any other property in that room valuable? A. Yes, we had molasses—we had a goodly supply of boxes.

Trial Examiner Korey: Just a minute.

Mr. Graham: May we have something off the record here?

Trial Examiner Korey: Off the record.

(Thereupon, there was a discussion off the record.)

Q. (By Mr. Graham) When you entered the room on either of these trips to which you have just referred, did you mingle with the employees and talk with them? A. Oh, no.

Q. You simply observed their conduct and returned to the office? A. Yes.

Q. Did you give the employees instructions, or any way address them when you entered there? A. No.

Q. Now, these employees were violating a company rule. Didn't you even instruct them to stop smoking? A. Mr. Galvin took care of that.

Q. Galvin? A. Captain Richter suggested to us in the office

it would be better for us not to put in an appearance. He
1996 was [838] desirous of preserving order, and he felt that it was best that we stay off the floor.

Q. When did you make your first trip? A. I should say, the first trip was some time between twelve and one. I just wandered up there to take a squint and I happened to see one of our messengers—a one armed evening boy—and I called him to come over; he was talking with them.

Q. Could you tell us your first trip by exactly stating it in reference to the arrival of Captain Richter?

Was it before, or after his arrival? A. It was after his arrival.

1997 Q. So you didn't go to see these employees at all before Captain Richter arrived? A. No.

Q. Did any other representative of the company do that? A. I believe they went close to them.

Q. What is the last answer?

(Whereupon the last answer was read.)

The Witness: Whether they did or not, I don't know.

Q. You don't know? A. No.

1998 Q. Did you see Mr. Farmington that day? The day of the second? A. I see him, usually, every day, and that was no [839] exception.

Q. Could you tell me the last time that you saw him before twelve o'clock? A. I personally saw him?

Q. Yes. A. I don't know; I might have seen him ten in the morning—I go up and down on his floor all during the day. When I saw him is no more important to me than when I

saw the superintendent on the top floor, or the foreman on the fourth floor. 1991

I couldn't say what time of the day I met Farmington. I met him at the back door. That is the door that has the large telescopic catch on the outside.

Q. Was that door locked during the day of the strike? A. The sliding door?

Q. Yes. A. That I don't believe has a lock on it; it was closed.

Q. This telescopic door with a padlock on it—this door was open wasn't it? A. You are trying to get me to say it was not open—this door was open when I got there.

Q. When you got there? A. When the strikers began to assemble, these two doors were open. Farmington, I know, closed the inside door, and locked the outside door, chiefly to prevent a crowd gathering [840] in the street, in an attempt to keep order and keep them from coming into the machinery department, and the doors were closed and locked. 2000

Is that what you are trying to get at in these questions, Mr. Graham—that is what I claim happened.

Q. Was there a lock enclosed in the outside gate closed on the Pullman Street side? When did that occur? A. I said it was my understanding of how it occurred, and when—shortly after they began to assemble. I might add, at that point, that that is usually closed. 2001

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Q. (By Mr. Graham) I would like to have you recapitulate the names of the persons who were present in the dis-

cussion which you had in the wash room of the Y. M. C. A.
002 A. I will do as best I can: Bill McGann, Eddie Grace, Nealey Fortunato.

Q. And was there anyone else there at the time? A. Two or three others.

Q. And you say you don't recall their names? A. I can't think right now.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

003 Q. (By Mr. Graham) Now, you were asked, I believe, yesterday to name the individuals who had been in the previous [841] group of fourteen, or whatever the number may have been involved here in the second group, that actually went around with the paper—the names of those individuals that appeared as the committee,—of the contracts now in force. A. That is beyond me.

(The last question was read.)

Trial Examiner Korey: Do you understand the question?

The Witness: Not very well.

004 Q. (By Mr. Graham) I have in mind here, three different groups of people. The first group had fourteen—who were there on the twentieth of July. A. Yes, I remember that.

Trial Examiner Korey: Break it up. Give us as many names as you can who were in the group of

fourteen or twelve or any number, who on the afternoon of July twentieth, in Mr. Dorsey's office. 2005

The Witness: Testify the names?

Trial Examiner Korey: Yes.

The Witness: Bertha Grossman, I believe was one, I can give you those that I recall.

Trial Examiner Korey: That is all we are asking you to do.

The Witness: Bertha Grossman was one, Moscola.

Trial Examiner Korey: The first name?

The Witness: Louis Moscola.

[842] Trial Examiner Korey: Well, is there any other Moscola? 2006

The Witness: Not that I know of. You mean those that were on the committee, that were in that room on that occasion?

Trial Examiner Korey: On the twentieth. We are not referring to anything else.

The Witness: I believe, there is another that I remember. Anna Bauer. That is as far as I can remember.

Trial Examiner Korey: And there was a group of about fourteen; is that right?

The Witness: I should think so, without counting them. 2007

Q. (By Mr. Graham) You recall whether James Sweeney was included in that group? A. No, I don't recall.

Q. You have no recollection? A. No, I can't recall.

Q. Do you recall whether Angelo—his last name we had a discussion about? A. That I recalled yesterday?

Q. Yes. A. I couldn't say whether he was there or not.

Q. Do you remember whether John Mahnken—is there such an employee as John Mahnken? [843] A. There is such an employee, but I don't know him.

Q. You don't know him? A. I knew him by sight, but I wouldn't recognize the name?

Q. Jenny Marrola—was she in that group also? A. I don't know.—I would know her by sight.

Q. How about William McGann—was he in that group of fourteen? A. I don't believe he was; he might have been, but I don't believe so, though.

Q. Then do you recall a second group—do you recall the names of the individuals who took the paper to the fifth floor? A. What paper on what floor?

Q. Do you remember—the paper that was taken on the fifth floor? A. It was dated the twenty-first of July.

Trial Examiner Korey: There was a committee, as I recall it, who changed around that paper, which was later destroyed. Could you give us the names of that committee if you remember it?

The Witness: No, I couldn't think of it. I think one of them Arndt, but I don't know.

Q. I think from your own indication that you will be unable to answer the question which I formally wished to ask you. [844] A. It is all right.

Q. Referring now to the first two groups, those who were concerned on the twentieth and twenty-first, has been one group—those two groups included the fourteen, or thereabouts, on the twentieth, and the people who were on the paper on the twenty-first who got signatures—referring to

them as one group—how many members of that group are on the present committee which signed these contracts? A. I just answered that—you mean who was on the contract? 201

Q. Who among the signatories of the committee on the present contract were in either of these groups on the twentieth or twenty-first of July? A. Those names that I have just given you—that I said before.

Q. Those three names that you have given us, Grossman, Moscola, and Bauer, were the only three that you can remember? A. Yes, those are the only three that I can remember.

Q. As to the return of the strikers, on the date of the twenty-fifth of August, you testified that approximately three returned on the twenty-fifth, that you might say that four returned on the twenty-sixth, that perhaps twenty-five returned on the twenty-seventh, and that on the thirtieth it was hard to estimate the number, and that there was some doubt as to how many returned on subsequent [845] dates. 201

I would simply like to ask you to clarify what I think is fairly clear already. You don't have any actual clear recollection of the number which returned at any time, do you? A. Oh, no, I couldn't attempt to retain data of that kind. My mind would have to be a calculator.

As I said, they came back in several groups. 201

Q. Now, when you were at the plant between the second and the twenty-fifth of August, you have testified that you were in the office a good deal of the time, and occasionally outside the plant at the front steps? A. Yes.

Q. When standing there, did you talk to the picketers ever? A. Oh, frequently. They did a lot of kidding. It was a very peculiar strike.

They seemed to be in good spirits most of the time, and they often would sing songs and one thing and another, and exchange pleasantries, and a couple of the girls were very nice to me, and would say, "Good morning," and "Good afternoon," and at no time was there any ill feeling between me and the picketers.

Q. And then you frequently engaged in conversation when you were standing there? [846] A. I would not call them conversations, no.

Q. But you did say occasionally, "Good morning"? A. I would exchange the pleasantries—"Good morning" and "Good afternoon"—I hope you are referring to the entire time of the strike.

Q. Yes, that whole period. A. They would speak to me and say "Hello," and "How is everything coming along? What are you going to do?" I engaged in conversations with quite a few of them.

Q. So that you did, in fact, have conversations during the whole period with the picketers? A. Yes, during the whole period.

I wouldn't call it conversations—an exchange of words, would be better.

Q. You frequently, then, exchanged words? A. Oh, yes; they talked to me.

Q. In all this time, what was your wish as to the picketers? Was it your wish that the strike continue, or that they return to work?

Mr. Mann: Just a moment, I object to that.

Trial Examiner Korey: I will sustain the objection.

Q. (By Mr. Graham) During all of these conversations the plant was shut down, wasn't it? A. During all of those conversations? 201

Q. Between the second and the twenty-fifth of August. [847] A. Oh, yes. I don't think that during that— You are talking about conversations?

Q. Or, exchange of words, or conversations. A. Well, "Hello," "Good morning," "Good afternoon," and one thing after another.

Q. During all that time the plant was idle, wasn't it? A. That is right.

Q. And the plant wasn't making any money, and, in fact, was losing money in its operations. The machinery, et cetera was standing idle? A. That stands to reason. 201

Q. And you represented the best interests of the company; that is, you have the first interest of the company at heart? A. Quite naturally, during that time, and you are anxious to have the plant continue to function.

Q. You were quite anxious to have the plant function? A. Of course, naturally.

Q. Did you ever, in any way, make that wish known to any of these people, when you were talking to the picketers? A. Make a wish that I wanted them to come back to work?

Q. Yes. A. No, no. They occasionally asked me, but I never expressed a wish to have them back. 201

Q. Can you tell me how long Anna Bauer has been working for the company? When was she employed? [848] A. Anna Bauer? I couldn't possibly tell you. I don't keep track of how long they are there.

Q. Could you verify the date of her employment, and ascertain it at the same time that you ascertain the present existence of Mr. Sanford's paper?

Trial Examiner Korey: Well, would you say she is working there two or three years—one, or two, or three?

The Witness: How could I pick her out of a large group of—

Trial Examiner Korey: Do you know Anna Bauer?

The Witness: Yes.

Mr. Mann: I will have Anna Bauer here this afternoon.

The Witness: We intended to bring her, but to expect me to remember the dates—

Mr. Graham: I just thought you knew.

I am not attempting to make you give a statement without knowledge, but I thought you might recall.

Q. (By Mr. Graham) When the employees began to return on the 25th of August, you stated, I believe, in your direct examination, that you interviewed some of those who returned and that Mr. Sanford interviewed some of those who returned. A. I believe Mr. Sanford interviewed everyone that returned; yes, I could safely say that he interviewed everybody that returned.

Q. Didn't you say on direct examination that you did yourself [849] interview all of them, but that Mr. Sanford interviewed some when you were not there? A. No, I didn't say that.

I did interview some and later brought them in to him. I interviewed some; he interviewed all.

Q. He interviewed all. And he interviewed some, then, when you were not present? A. Yes.

Q. Didn't you also say that Mr. Sanford wouldn't open his mouth unless you were there? A. If it were possible to

have me there, obviously, and some employee came in—I couldn't be there to greet these employees. 2023

Q. So that Mr. Sanford did interview some of these employees in your absence? A. Yes.

Q. Now, on the 9th of September, you testified Mr. McGann approached you? A. Yes.

Q. Can you tell me just what he said when he approached you?

I presume he came into your office. A. Yes.

Trial Examiner Korey: So that we won't have the record in any way confused, when you say "McGann" you mean the [850] "McGann" who was the employee 2024
of the company?

Mr. Graham: Yes, that is right.

The Witness: Yes.

This McGann either came to my office or stopped me as I went on my rounds.

Mr. Mann: I would like to hear this, too.

The Witness: This McGann either came to my office or stopped me as I was going around the factory and asked—told me that they had elected a bargaining committee upstairs and how would they get recognition in the office.

2025

Q. (By Mr. Graham) Did he, at that time, ask you to explain what he should do as the next step? A. Explain what he should do first?

Q. To explain to him what the next thing the employees should do. A. He asked me, saying, "What shall we do to get recognition? We have elected a bargaining committee."

Q. And then, I believe, you testified, you refused to tell

him what he should do. A. I wouldn't say that., I said, you
2026 can see Mr. Sanford and he will undoubtedly help you.

Q. Didn't you testify that you yourself refused to help him? A. I, myself, refused to help him.

[851] Q. So that you did, when you met Mr. McGann say that you yourself refused to help him? A. Yes.

Q. Why did you say that? A. I had too many things to do; I am a very busy man.

I felt that I had plenty to do without worrying about that.

Q. Are you more busy than Mr. Sanford? A. I believe so, yes.

2027 Q. And the only reason why you told him that you, yourself, would not help him, was because you were too busy to do so; is that correct? A. That is the gist of the reason.

Q. Then he went to Mr. Sanford? A. That is right.

Q. And Sanford in his presence dictated to a company stenographer? A. I didn't say in his presence.

Sanford dictated to a stenographer. Whether he was present or not, I don't recall. But Sanford dictated a paper which he gave to McGann.

Q. So that the paper which McGann received may have been actually dictated by Sanford when Sanford was not present? A. It may or may not; I don't know.

2028 Q. Now, is Respondent's Exhibit No. 2 the paper which [852] Sanford dictated—I am sorry; Respondent's Exhibit No. 10—is that the paper to which you are referring? (Handing to witness.) A. This is the paper to which you are referring; that is the one I am testifying about.

Q. Yes. And that was dictated by Mr. Sanford to his stenographer, and you don't know whether McGann was present or not. A. Whether he was or not, I don't know.

Q. Well, Mr. McGann indicated that in some way or another he had been elected; is that correct? A. He made the bare statement that he had been elected.

Q. Did he indicate to you when he was elected? A. No—just that bare statement.

Q. Did you ask him first to—did you ask him as to how he knew he had been elected, or whether he had proof of his election? A. No, I just told you, he went down to see Mr. Sanford to arrange in some way to get proof that he was elected.

Q. Now, these elections that occurred, as you have testified, took place on the different floors of the company, each floor describing its own technique, some choosing those who were most expressive, some choosing those who were most popular. A. I said that is what I heard. I don't know how they [853] did function.

I told the Examiner that is hearsay, of what they have told me since.

The mechanics of that—how they were held—I haven't the slightest idea of that, except that they said such and such a thing.

Q. I would like you to write the word "foreman" three times, please, on a piece of paper (handing piece of paper to witness). A. (The witness writing on paper) Foreman, or foremen—I suppose it doesn't make much difference, does it?

Q. Was there any time after the plant had reopened, and as you testified over one hundred had returned to work after that date— A. Yes.

Q. (Continuing) When the employees did not receive wages for a period of time when they were actually in the

plant outside of their lunch hour during the working day?
032 A. That is a rather involved question, too.

(The last question was read.)

Trial Examiner Korey: Do you understand the question?

The Witness: No, the employees didn't receive pay while they were in the plant?

Q. (By Mr. Graham) Yes. Outside of their lunch hour, was there any time when they were not paid for time spent
033 during [854] the working day in the plant; that is, after they came to work at eight or nine? A. If we did anything like that, we would be greeted by howls.

Q. (By Mr. Graham) Could it be answered by a negative or affirmative answer? A. I can't recall that any time that any employee was in our plant during working hours that he wasn't paid for it.

Q. You would have known if that had happened? A. It would have been brought to our attention, yes.

Mr. Mann: I don't get it; what is the answer, Mr. Stenographer?

034

(The last answer was read.)

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: All right, gentlemen, please proceed on the record.

Q. (By Mr. Graham) When McGann referred to an election, was he talking about the same election which you described, saying that on the fifth floor they chose the most self-expressive; on the fourth floor they chose the most popular, etc.? A. That is my understanding.

Q. That is the election to which you are referring.

Trial Examiner Korey: Off the record.

[855] (There was a discussion off the record.)

Trial Examiner Korey: We will recess until 2:00 o'clock.

Is that satisfactory to you, Mr. Graham?

Mr. Graham: I believe so.

Trial Examiner Korey: Is that satisfactory to you, Mr. Mann?

Mr. Mann: Yes.

Trial Examiner Korey: Then, if it is satisfactory to everyone, we will now recess, to resume again at 2:00 o'clock p. m.

(Thereupon at one o'clock p. m. a recess was taken until two o'clock, p. m.)

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[856] AFTER RECESS

(Whereupon the hearing was resumed, pursuant to recess, at two o'clock p. m.)

Trial Examiner Korey: The hearing will now come to order. You may proceed.

WALTER J. HEALEY resumed the stand as a witness by
2038 and on behalf of the Respondent, and having been previously duly sworn, testified further as follows:

Cross Examination (Continued):

Q. (By Mr. Graham) I have here a copy of the "Baker's Journal" to which reference has been made previously during my cross examination, and I hand it to you, Mr. Healey, to ask you whether it is the same issue as the copy which was left in your office by Mr. Galvin? A. Why, I believe it is; it looks to me like the paper he showed us and read from.

2039 Q. You will notice that attention is directed on that by red markings as to the references made to Mr. Galvin himself. A. Yes. He pointed out numerous things on this pamphlet, or whatever you call it.

He pointed out numerous places where his name is mentioned.

Yes, he called our attention to that one.

Q. I would like to have you explain to the Examiner what [857] there is about the paper that is suspicious. A. Well, the size of it, for one thing. I had never heard of it, for another, and the fact that it—it didn't look to me like a newspaper.

2040 That is a thing you could bring into a printer yourself and have printed over night.

Q. And your suspicion was that Mr. Galvin might have done that? A. He might very easily have dashed off a little broadcast, two sheets: he might have brought something into a job printer in the neighborhood, for that matter.

It didn't look to me like an honest-to-goodness newspaper.

Mr. Graham: So that the Board can have this paper before it, and judge for itself, this witness' responses, I wish to offer that in evidence as Board's Exhibit No. 12, Mr. Examiner. 204.92

Trial Examiner Korey: There being no objection, so mark it into evidence.

(Thereupon the document above referred to was marked Board's Exhibit No. 12 in evidence.)

Q. (By Mr. Graham) In the conduct of the National Licorice Company, with which concern you have been connected for many years, is it your experience, Mr. Healey that the business is somewhat seasonal? [858] A. No. To the contrary, it is not seasonal. 204.93

Q. There is a steady volume of business throughout the entire year? A. No. I wouldn't go that far.

At the end of November there is a decided falling off of sales, as we don't manufacture any Christmas specialties; and from the first of December—probably to the first of January—in the normal year—we are slack.

Q. Now, I would like to have you tell me without, if you so choose, revealing any particular names, whether your firm deals through established outlets in distributing its produce; and has orders for its product from such outlets? A. Well, I don't know just what you mean by "established." 204.94

Q. Perhaps the question would better be dealt with by your explanation of the fashion in which the products of the company are distributed—just a cursory explanation of all that. A. We sell—is that what you mean?

Q. Yes. A. The people whom we sell; we sell the confectionery jobbers or wholesale—they don't like to be called

jobbers; we refer to—they refer to themselves as wholesalers.

Q 2044

We sell the wholesale drug trade; we sell the chain stores, outfits like Grant, Woolworth, McCrory, Kresge, and those people; we sell the manufacturing confectioner— [859] quite a few of them; we sell the pharmaceutical drug houses; we export, we sell the grocery trade—wholesale groceries; and we sell the vending machine trade.

I believe that is substantially the extent of our distribution.

Q. Now, will you tell me whether, when you sell to any of these agencies and businesses which you have mentioned, you

Q 2045

do so on the basis of regular requirements, which they have, for which—or would you supply regular consignments of your product? A. No, I would say their purchases are very irregular.

When our salesman went in to one jobber, they might order five cases, and the trip after that they might want ten.

There is no way of forecasting how they will buy the product.

One week they will buy, as I say, four cases, and the next week they will buy ten; the following week it may be eight more; and the next week only two.

There is no way of forecasting just what their purchases

Q 2046

will be.

Q. Do you have established contracts with any of these outlets? A. We have no contracts with anyone.

Q. And the way it is done, is simply the salesmen are sent [860] out covering the country, more or less, and they get orders and bring the orders to the plant? A. Yes. Some orders are mailed in—that mail fluctuates; one week it will be heavy, and the next light.

Q. Can you tell me whether or not these fluctuations balance themselves out, or whether they actually occur over a 204
seasonal period, or whether there is a seasonal increase and decrease. A. No. I think from January 1st to November 1st there might be a slight increase in the months of July, August, and September—July—but it is a very slight increase, and on the whole we have—we are able to keep our plants in full operation the year around, up until the first of November.

Q. So that, by and large, your business throughout the year, up until the first of November, as you have qualified it, calls for a fairly constant delivery of your product, you would say? A. Fairly. And as I say, one month will be 204
heavier than the next month, and the next there might be a falling off, and the next month will be slightly heavier.

It is unpredictable; it is hard to say.

Q. You just said it was fairly steady. A. Fairly steady, yes.

Trial Examiner Korey: Mr. Graham, I don't like to [861] interrupt you, but what is the purpose of going into this phase of the thing at this time?

Mr. Graham: The purpose will be revealed in about two minutes. It is not secret or deceptive, but I will reveal it in the next few questions. 204

Trial Examiner Korey: All right.

Q. (By Mr. Graham) Now, do these wholesalers purchasing from you keep in supply somewhat more licorice than they need, so that they won't be caught short, and purchase directly when they feel their supply is running low, so as

to keep the stock at a fairly steady level? A. That depends upon their financial position.

If they are in financial straits, then they want to keep their stocks as small as possible.

If they have plenty of funds, they are apt to overstock. They are apt to do it as a courtesy to the salesmen.

Q. And then if any of these wholesalers had been unable, because of lack of space, or for any other reason, to purchase licorice from you in which their stocks reached very low ebb, and then became able to purchase from you, for example, in case they received some money, and were able to do it that way, they would then probably place large enough orders to bring their stocks up to the level which they considered desirable: is that correct? [862] A. I would appreciate it if you would read it over.

(The reporter thereupon read the last question.)

The Witness: Their method of reasoning in a case like that is something which I am not qualified to answer.

Q. Naturally, but that is a reasonable assumption; is it not? A. It perhaps is; I would not qualify to answer that question.

Q. You would not care to say whether that is reasonable or not? A. No. They might be influenced by their affection for the salesman, and their regard for him.

Q. Assuming all other factors were to be eliminated— A. I suppose that is reasonable to assume, although it is just an assumption.

Q. So that, then, after your plant itself is closed, or was

closed down for a period of a month or so, one might reasonably expect such an increase in the size of the order from the wholesalers? A. After they had been purchasing from us— 205

Q. Yes. A. One would not reasonably expect that, because the average jobber would not be without stocks of licorice, that he would buy from competitors.

I think the average jobber's stock at the end of the [863] strike was as full and as extensive as it was at the beginning of it.

They would go to competitors, and so if an order came in to them for a box of a certain item we make, they would refer the order to one of our competitors and get it. 205

Q. So that you would say that every jobber was as well supplied at the end of the strike as he was at the beginning, notwithstanding the fact that the plant, one of the biggest, was entirely inactive? A. Yes, I believe that a strike would not make his stock of licorice specialties run out. If he had to go to a competitor, he would.

Q. Mr. Healey, did you telephone to the company in connection with our conversation? A. I did, yes.

Q. What did you ascertain? A. No record could be found of the various papers you asked for, but I did get the date of Anna Bauer's employment for you.

Q. Could you give me that date? A. July 27, 1937. 205

Q. July 27, 1937? A. Yes.

Trial Examiner Korey: July what?

The Witness: 27th.

[864] Trial Examiner Korey: What year.

The Witness: 1937; this year.

Trial Examiner Korey: She was apparently a very new employee?

The Witness: That is only four days before the strike was called.

Q. (By Mr. Graham) I believe, Mr. Healey, that you gave Anna Bauer's name as being one of those who was on either of the committees on the 20th or 21st, and also on the present committee, did you not? A. I am inclined to feel that way—when you refer to committees—she was on this last committee and group.

In that connection, yes.

I believe I am reasonably sure in addition to being on the present committee, she was.

Q. She was employed on the 27th of July? A. The 27th of July?

Q. And the previous groups were both chosen about the 20th or 21st of July? A. Yes. It looks to me as though I got the wrong dope from the office.

Mr. Mann: Is it your recollection?

The Witness: My recollection is more apt to be wrong than the records.

My recollection is she was one of the group. Yes, she [865] must have been.

Off the record—

Trial Examiner Korey: She was a new girl?

The Witness: She was a new girl, four days before the strike.

So, therefore, she could not have been on the group, if they gave me the right date over the phone.

Q. (By Mr. Graham) How about your recollection as to all the rest of these matters? 205

Do you have any reason to believe it is more likely to be more accurate than in respect to Anna Bauer? A. Yes, there was a group—I am every day around in the plant, usually.

There was a group coming down into the office, and they made all sorts of groups since then.

They have names that are foreign to me, and to recall the names of foreign employees is something I frankly admit is a tough task.

I tried yesterday to think if Anna Bauer was on that group, and I gave a very honest recollection; but evidently I was wrong in what I said. 206

Q. So that as to the particular names of the individuals that you attempted to remember, there is a chance of similar inaccuracy also? A. I don't think so. That is a very hard thing to remember. [866] There having been so many groups, I will confuse their group with the present group, and it is very easy to confuse names of two groups when you are trying to picture them as they sat in a room.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: All right, gentlemen, proceed please. 206

Q. (By Mr. Graham) Now, I call your attention to Exhibit No. 10—to Board's Exhibit No. 10, the contract of Laura Brewster, and ask you whether you have a similar contract in your possession before you at this moment? A. I have.

Q. The copy which you have is a blank copy? A. No, it is
062 a signed contract.

Q. Signed by whom? A. Lucille Sylvester.

Q. What is the date of the signature on it? A. The 20th of September.

Q. That is another contract, then, that pertains to an individual who returned in the group of fourteen to the plant on that date—never mind, if you don't know about that. A. I presume she was.

It is the date that the group came back. She might [867] have been there the day before.

Q. However, I don't care to insist upon your answering
063 that. A. I couldn't say that.

Q. Could you tell me whether this printed matter on the paper—on this paper—is mimeographed or multigraphed? Or what time of printing it is? A. It is mimeographed.

Q. How do you know it is mimeographed? Did you see it mimeographed? A. I personally had the mimeographing done.

Q. You had it mimeographed? A. Yes.

Q. When you—when did you do that, Mr. Healey? A. I should think on September 10th or 11th.

Q. Do you know definitely? A. I couldn't tell very definitely
064 now just what date it was.

Q. What company did the mimeographing? A. The name of the company I wouldn't know.

I know I have a card of the party—the representative that called on me; that perhaps I could check up.

Q. Do you have the card with you? A. The place is on Myrtle Avenue, Brooklyn, I may say, and I may later be able to find that card.

[868] Q. You don't know any more than that it is a place on Myrtle Avenue, Brooklyn—do you know the name of the company? A. No, not this second.

Q. Do you know approximately where it is on Myrtle Avenue? A. Yes. It is not far from Flatbush Avenue.

I know I drive up in my car and turn to the right on Myrtle Avenue—go up the extension and turn right.

Q. Now, did you place the order with this company for the mimeographing of this contract? A. Yes.

Q. And you don't recall now the exact date? A. No, I can't recall; I can't attempt to recall what date it was.

Q. Did you place this order under Mr. Sanford's directions? A. Yes. All I can say about it is it was shortly after the bargaining committee had approved—the committee that represented our employees—and then I went out and got them made out.

Q. Was that the conference of September 9th, or 10th, or what? A. The 10th, I believe it was.

Q. So that you had this contract order to be mimeographed on the 10th? [869] A. I wouldn't say definitely the 10th.

Q. I am sorry. A. I wouldn't definitely say the 10th.

I can't recall just what date it was. It was mimeographed about that time.

Q. When you say it was shortly after the conference of the 10th, do you mean it was the same day or another day? A. It may have been that day or the next day. It was within forty-eight hours, at least.

Q. Was that the—so it was either on the 11th or the 12th; is that correct? A. Yes.

Q. Could it have been on the 10th? A. It might have been on the afternoon of the 10th; it might.

Q. When were these contracts delivered to you? A. Within
068 a couple of hours, I should think.

I think it took them two or three hours.

Q. Were they delivered to you personally? A. Yes.

Q. Did you pay for them? A. Yes. I think I had to pay out of petty cash. I believe so; that is my recollection; and I brought them in.

We didn't want to draw a check; it was only a couple of dollars.

[870] With our accounting of this type, we pay it out of petty cash.

Q. Do you keep a record of such payments? A. No. I think
069 it would be a general cash report, included with the expenditures for the day.

Q. It simply was included in a large group of expenditures? A. Yes.

Q. So that you have no way of ascertaining when you actually received it? A. I might.

Q. I would like at this time to ask the witness to ascertain when they were mimeographed, the concern which did the mimeographing, and that the record be kept open for a reasonable time, or would it be possible to have it ascertained right now?

070 Mr. Mann: I object on the ground that I don't think it is a proper subject of inquiry.

It is a mimeographed paper. It does not mean a thing on the face of it.

The date, I think is unimportant. It must have been some time in September.

Trial Examiner Korey: He testified it is between

September 10th, September 12th—the 10th, the 11th, or the 12th that they were ordered.

[871] Mr. Graham: It is fairly critical just when it occurred. 207

Trial Examiner Korey: Well, we got the three dates to go by, if he does not exactly recall the date.

The Witness: I am trying—

Q. (By Mr. Graham) I am not accusing you of hiding it. I just wondered if you could find out. A. I assure you that I will try.

Trial Examiner Korey: I don't think we should keep the record open as to this. 207

The Witness: You have my word that if I can possibly find out the hour and the day I will do it; I will make an earnest effort to do it.

Q. (By Mr. Graham) And you will at the same time attempt to ascertain the name of the company that did the mimeographing? A. Yes, I can do that.

I can find out very easily about that, I am sure that I can.

Q. You have stated that Mr. McGann came to you on the 9th of September and said that he had been elected as one of the committee. 207

Can you tell me at what time he came to you with that statement? A. No, I can't say the time. Sometime, I believe, during [872] the afternoon.

As I said before, whether he came to my office, or whether he stopped me on the way through the plant, I could not possibly say.

I simply recall the conversation he had with me, that is all, whether in my office or anywhere through the factory.

I believe, to the best of my knowledge, it was in the afternoon.

Q. And he then, by your direction, went to Mr. Sanford, is that right? A. That is right.

Q. Now, do you know when it was that Mr. McGann left Sanford's office, and Mr. Sanford started the dictation of the petition? A. No, but I think it was immediately after I spoke to him. I think he left me and went right downstairs.

Q. And then it was just after he had spoken to you that he had seen Mr. Sanford, and the event described ensued, is that it? A. That is right.

Q. Now, do you know when it was that Mr. Sanford came—when Mr. Sanford gave him the petition which Mr. Sanford had had typed, to Mr. McGann? A. It could not have taken ten minutes to a half hour.

Q. Again, this is an indefinite time in the afternoon, [873] is it? A. Oh, yes, some time in the afternoon of that day, I believe.

Q. You don't recall whether it was July 1st or—you don't recall whether it was at the first or last, or anything else? A. I can't possibly say whatever time it was.

I was on my way through the plant, or he came down to my office.

Q. Your anxiety as to the exact times left you after the strike; is that correct?

Prior to the strike you noted everything down by the minute. A. Things that struck me as being important are registered in my mind with clearness, but things that seemed to me to be irrelevant, I didn't bother.

If I filled my mind with useless data I would be groggy most of the time.

I just tried to remember the things—dates—that I considered important.

Q. On the ninth, in the afternoon, the petition was given to Mr. McGann by Mr. Sanford; that is correct, isn't it? A. Yes.

Q. When was the petition signed?

Did Mr. McGann then take it to the workers? [874] A. Where it was taken, I don't know.

Q. When did you next see it? A. I believe the following morning he brought it down and said that he had so many signatures on it, the number I can't recall, but it was then, he said, more than the majority of our workers.

I believe there are 109, as I recall it—109 signatures on it when he showed it to me, the next time.

When I say, "me," I mean me and Sanford, or Sanford and I, to be grammatically right.

Q. That was the morning of the tenth, was it? A. It was the morning of the 10th?

Q. Yes. A. Some time on the tenth, I believe, the morning, most likely, or it might have been the same day—the ninth—I think it was the ninth, because I am sure that on the ninth, the day of the ninth,—we knew that day we had 109 employees signed on that day.

Q. So he returned this paper which he had gotten in the afternoon of the ninth with the 109 signatures, that same afternoon; is that right? A. I wouldn't say that. It may have been the morning.

It may have been any time during the day. All I can say is that on the 9th of September—that is one date I memorized—we had 109 signatures when he showed it to Mr. [875] Sanford.

Q. Can you tell me where your uncertainty lies now, if
080 you can? A. I am uncertain as to the time and hour he got it.

Q. You testified it was the afternoon. A. I did. As I said, I didn't take any particular note of the time.

To me it was just a passing moment. It didn't make any particular impression upon me and I didn't try to memorize the time.

If I were really pinned down to it, it might have been the 8th.

I can't remember the hour, but it—because it didn't register.

081 Q. In any event, irrespective of the times as to which you have no recollection— A. Yes.

Q. (Continuing) On the ninth, with the possible proviso, that it may not have been the ninth at all—if you are able to say it was the ninth, let us get that date definite— A. Yes.

Q. It was the ninth? A. It was the ninth we had 109 signatures.

My recollection on that is very clear.

Q. As far as you can remember on the 9th Mr. McGann ap-
[876] proached you; you sent him to Sanford, Sanford typed out the beginning of a petition, and he gave it to Mr. McGann, and he got the signatures and brought the peti-
082 tion back? A. I am certain it was the ninth.

The only thing I am certain about is that on the ninth we had 109 signatures on it.

It might have been that morning, or it may have been the afternoon. The time didn't register with me. But on the 9th of September he had 109 signatures when he came down, as I say.

Q. You are sure that he had 109 on the 9th, and that is

the only thing you are sure of? A. That is the only thing I can really swear to with any assurance that it was right. 2083

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record. Proceed, gentlemen.

Q. (By Mr. Graham) This petition apparently was prepared on the 9th of September, so I guess we can fix that date, can't we? A. Yes. 2084

Q. So it would now be possible to say that since the petition was prepared on the 9th of September, that that was the day upon which all of these events which we have [877] just been discussing, transpired?

McGann came to you; you sent him to Sanford; Sanford had the petition typed; gave the petition to McGann; McGann took it to the workers; got 109 signatures, and brought it back to the office? A. That would seem to be the case.

There are names, of course, on this petition which weren't there on the 9th; they kept adding to it as they came in.

Q. Well, there were, however, 109 on the 9th? A. That is my understanding. 2085

Q. How long is the lunch hour in your plant? A. A half hour.

Q. When did you leave the plant that afternoon? A. When did I leave the plant that afternoon?

Q. I simply want to determine when this thing was brought back—before the plant closed for the afternoon; is that correct?

2086 This thing was brought to you by Mr. McCann with 109 signatures before the plant closed? A. I don't think it was brought around; I think he retained it, because he said in the morning he wanted some more.

I think he told us he had 109.

In the morning he brought it down and he had more than [878] 109.

Q. But he told you before the plant closed? A. He told me before the plant closed that he had 109 signatures.

2087 Trial Examiner Korey: How long has McGann worked there? Have you any idea?

The Witness: He has been there a good many years. He was away a year or two ago for a time, then returned to work, and he has been there a couple of years now.

He runs back a good many years.

2088 Q. (By Mr. Graham) And, now, the next thing that happened to which you have definite knowledge is, I presume, the discussion with the group on the 10th of September as to the contract. A. Right.

Q. And you and Mr. Sanford, and who else for the company was in that discussion? A. Sanford and I were the only ones at that first discussion.

We had two discussions, I believe, when repaired to his office again, Mr. Smiley, C. A. Smiley, was present.

Q. That was the same day? A. That was the same day.

Q. And it was during that discussion that you considered the various terms and provisions of this contract? [879] A. That is correct.

Q. Now, when did that discussion start? A. The time of the day, you mean?

Q. Yes. A. I should think that was about ten o'clock.

Q. And for long long did it last? A. Until about noon, I should think. 208

Q. Until about twelve o'clock? A. Yes.

Q. And that included both phases of the discussion; that between you and Sanford and the employees, and that of between you, Sanford, Smiley and the employees? A. Yes.

Q. And you are not certain as to whether you had the contract mimeographed that same day, or later? A. No, I couldn't be certain.

Q. Now, referring to the contract itself, or before doing that—the individual who discussed this contract with you and Mr. Sanford, are the individuals whose names are signed thereon; is that correct? A. That is correct. 209

Mr. Mann: There are—

Mr. Graham: I am referring to the contract, and not the petition.

The Witness: The committee discussing the contract, [880] you mean?

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record.

All right, gentlemen, you may continue. 209

Q. (By Mr. Graham) Now, the second whereas clause in this contract states:

"Whereas the employees engaged by and working for the employer have duly and regularly selected and designated the committee whose names are hereunto subscribed, as their spokesman and representative, which said committee has been so recognized by the employer; and—".

I would like to ask you whether or not it is true that, as
2092 you have testified, the employer had no knowledge as to the regularity of the selection and the designation of the committee. A. We had no what?

(The reporter thereupon read the last question.)

The Witness: Well, we had very good knowledge, indeed. We felt that the signatures on this designating petition were not forgeries.

Q. Did you compare them with any other signatures that
2093 you had? A. We did not.

Q. Did you have any basis for telling that they were not [881] forgeries? A. In our confidence—

Q. Do you know of any actual force or coercion being exercised during the obtaining of the signatures? A. We had no knowledge of how the signatures were obtained.

Q. So that you had no basis for believing that they were regularly obtained? No knowledge, other than the word of the people who had said that they were the signatures of these people? A. We take it for granted that these eight employees who had been with us many years would not go in for forgery—that was our thought.

2094 Q. Including Anna Bauer? A. Anna Bauer was one of the group who had not been with us for any great length of time, but the others had been with us quite some time.

We felt that eight people could not conspire to put over a false document.

Q. Well, this was a single petition, wasn't it? It was all pasted together. A. I said a false document; single petition.

Q. So, I presume, that when the signatures were obtained, they weren't obtained by all eight people around the one individual, saying, "Here, sign this," or "We ask you if you [882] want to sign this." A. As I say, the mechanics of how they got the signatures is something I haven't gotten into.

It didn't interest us at all.

Q. It didn't interest you at all? A. No. We felt confident in our men that those signatures were legitimate, and obtained in the proper fashion.

Q. So a single one person could have taken the petition around for the signatures? A. As far as I know, two people could have taken the petition around.

We didn't know a thing of how it was done.

We have no idea how they got those names on that petition.

Q. At the point of a gun— A. They might have for all my knowledge.

Q. Was this petition actually taken around during the day of the ninth on company time? A. I just said, Mr. Graham, that who took the petition around, and how it was taken around, is something I have no knowledge of.

Q. It was during the day? A. I assume. It might have been at any hour. It might have been any time.

I am not qualified to talk.

[883] Q. We have established definitely the place—the date, that the petition was not prepared until the ninth, and there were 109 signatures on it on the ninth, so we know it must have been taken around during the ninth. A. You may establish anything you want.

As far as I am concerned, when it was taken around, how long, when the signatures were taken, I have no knowledge of that.

Q. I believe the facts as to the actual time are sufficiently developed.

Now, coming to the operative provisions of the contract, we have the first:

> "The employer agrees to pay all employees engaged by and working for him in any capacity an increase of five percent of their hourly rate, weekly rate, or piece-work rate, that was in full force and effect on July 16, 1937."

Now this date, July 16th, why was it chosen—that particular date.

Mr. Mann: I object to that as being immaterial, Mr. Examiner.

The Witness: We had to say some date.

Mr. Mann: I object to it as being immaterial, why July 16th.

Trial Examiner Korey: I think it is all right; I will allow it.

[884] Mr. Mann: I will take an exception.

The Witness: Why establish this one? We had to take some date.

Our fiscal year ends at the first of July, and it is about the fifteenth of July before we have figures together to know when we—how much we made for the six months previous.

That was our fiscal year—semi-annual closing of the fiscal year.

We close twice a year.

The books are closed the first of July, and you can

understand a company of our size, it takes two or three weeks to get figures together so we will know just how much we have made in the period.

We had a chart—if you will read one of the analyses—which comes up for revision of wages—that it should be some time in July before we could attempt to adjust any wages, but that is the time of the year that we have our figures prepared, and it seemed like a very excellent time.

Q. Wouldn't July 1st be a logical time? A. No. The books are closed then.

Q. Closed? A. Yes. Why, our auditors aren't through for weeks thereafter.

We haven't any idea of our figures until we can tell [885] them in July, and we then have to approximate them.

Q. When is the succeeding semi-annual accounting period? A. December 31st is the end of the fiscal year.

By working very hard then, the auditors are able to give us approximate figures around the 12th or 13th of the month, and it would take them fully two weeks to give us approximate figures.

Q. Selecting the sixteenth, would give you during that semi-annual accounting period, two rates of salaries anyway, the salary rate prevailing from the 1st to the 16th of July, and the rate prevailing from the 16th to the end of December. A. Yes, but there is no way of getting around that—no way to get around it.

Q. Except choosing July 1st? A. Choosing July 1st, did you say?

Q. Yes. A. If we chose July 1st, we would have had something else to contend with.

We would not know what the result of the six months
04 previous was, and we would not know on what basis to place the new contracts.

We had to wait until some time in the middle of July for that.

Q. Who proposed this five per cent increase? [886] A. Who proposed it?

Q. Yes. A. Do you mean which individual in our company proposed it?

Q. Yes. A. We all arrived at that figure.

Q. You all arrived at that figure? A. Yes. We took our
05 pencils out and figured costs, and what it would cost us to pay an increase.

We all came—some people thought more, some less, but we came to that conclusion that five per cent was the very best we could offer our employees.

Q. You all came to that conclusion? A. Yes.

Q. When was all this figuring done; was it done on that day? A. No, we had given it thought for weeks previously—not just that day.

We wanted to make our employees satisfied, and we wanted to give them the most that we thought we could. We wanted them satisfied.

We decided among ourselves that five per cent was the
06 most the company could consistently do, and be serving the interests of our stockholders as well.

Q. So that the offer as to the increase in wages of five [887] per cent, which was made on the twentieth of September, constituted the same increase as that which had been offered informally on the twentieth of July: is that what you would say was true? A. About—that is right.

Q. And this five per cent figure was the figure which the company officials arrived at after checking over their books and determining how much they could offer to pay, and then computing how much they could increase the existing wages; is that right? A. That is right.

Q. And, now, the second provision states:

> "The employer and the employees mutually agree that the employer has the right to place each, any or all of his employees on a piece-work basis.
>
> "The piece-work rate established shall be arrived at by mutual agreement between the employer and the employees of the department involved."

That is only a part of the second clause in the contract.

I would like to ask you as to the first part—the first sentence which I read—

> "The employer and the employees mutually agree that the employer—"

Who proposed that? [888] A. Who proposed that?

Q. Yes. A. That is another thing we all got together on. That whole contract was a joint effort on our part—we all got together on it.

Q. On the part of the officers of the company? A. On the part of the officers of the company.

Q. So that as to that first sentence, that question was a matter the officers of the company decided they would be able to and wished to put into the contract; is that what you would say? A. We felt we should have some understanding about the piece-work and interchanging of work pro-

gram, and we felt that that paragraph should be satisfactory
110 to our employees after we explained to them why it was we had the paragraph in there.

Q. And as to the second sentence:

> "The piece-work rate established shall be arrived at by mutual agreement—"

Was there any technique set up or established by which that mutual agreement should be reached? A. It says:

> "The piece-work rate established shall be arrived at
111 by mutual agreement between the employer and the employees of the department involved.
>
> [889] "In case the employer and the employees cannot arrive at a satisfactory piece-work rate, that question shall be submitted to arbitration hereinafter provided."

Q. As to the first sentence—was there any technique or implement for making that agreement? A. No technique was set up. Presumably it was by common consent.

That was our understanding of it.

Q. And was that provision again one that was arrived at,
112 as had been the previous sentence in the first clause, by consultation and figuring by you and the officers, would you say? A. We all took—we all got together for the basis of something that would be satisfactory.

Q. The officers of the company? A. Yes, that is right.

Q. That is right? A. Yes. We figured something which we would submit to the employees.

Q. And is that true with respect to the rest of the second

provision; that the statements made in the second provision of the contract, are statements upon which the officers, having made their calculations, agreed, and which they then suggested should be included in the contract? A. Well, I might say, before that—I might say that [890] before we had agreed, we had given them in substance this paragraph, and it was satisfactory to them—that is how it was.

Q. When did that occur? A. This contract, as shown here, was in existence at the time we were dealing with this committee.

We had a paper that contained substantially these provisions, but there were a great many variations in the paper.

As I said in my direct examination, this paper that we had drafted, called for a five-year term.

This contract that you have placed before me was not in existence while we were talking to this bargaining committee, so any question you may ask, "Was this established at that time," or "Was there any prior establishment of it?" This contract you are showing me now is one that was arrived at after we had had this conference with the bargaining committee.

There are various things in this contract that were quite at variance with the discussion—with the copy of our offer that very day.

Q. Addressing yourself to my question, instead of continuing—we will get to the rest of the contract later—are the rest of the provisions of this second clause of the contract, provisions which, like this in the first clause, [891] and like the first sentence of the second clause, were arrived at by the officers of the company after they had sat down and attempted to figure out what they could actually do? A. Yes. They were presented to the employees, and after they

were considered satisfactory, we enumerated them in this
116 contract.

Q. What was said by the employees as to the last sentence of the second clause, the first part was incorporated as recommended. A. "It is further mutually agreed and understood that any piece-work rate established will enable the worker to earn at least the same amount of money he had been earning on an hourly basis of pay."

When that was presented to the bargaining committee, they unanimously decided that that was a very fair arrangement. They complained, as I recall it, that wasn't in our original draft.

117 Q. I thought you just testified that it was. A. That last line; you have not come to that at all. Not that last line.

It was agreed and understood that any piece-work rate established will enable the workers to earn the same amount of money—we hadn't touched on that at all; that was an [892] idea of the bargaining committee.

They pointed out cases upstairs where they were making one particular piece—it is an assorted box that fits different items, and they told us that many of the girls upstairs complained that although they were fast workers, they were not making as much money on this assorted box as they would on an hourly basis.

118 Even though they were on piece work and good workers, they were not making as much money.

They felt in fairness to these girls we should put some proviso in this contract that would be fair to them so that they would at least make the amount of money they had been making on a time basis.

Q. Who is the individual who made that suggestion, do you know? A. I think two or three of them, and I might say,

Bertha Grossman, because she seemed to do the most of the talking that day.

I believe she was the one that first broached that subject and—the subject of doing something for these workers who were on the assorted boxes, so that their wages would be brought up, if they should fall down, to at least an hourly basis of pay.

Q. As far as you know then, it was Bertha Grossman—you aren't sure? [893] A. No, I am not sure.

Q. You aren't sure? A. No. They were all talking—who made any particular statements that day, it wouldn't be possible for anyone to say, except the one who made it.

Q. In the third provision of the contract, in the second sentence thereof, it is stated:

> "The employer is permitted and has the absolute right to require of the employees or any or all of them overtime work which said overtime work, except for maintenance men, engineers and firemen, is to be paid for at the rate of time and one-quarter for all hours work in excess of 572 hours in every thirteen payroll calendar weeks."

Well, now, who made this proposal? Who proposed that? A. Who in our company made this proposal?

Q. Who proposed it? A. Well, that is another thing we mutually arrived at. As a matter of fact, you can take that same answer for every paragraph.

We went into a huddle and tried to work out a skeleton contract that we felt would be satisfactory to our employees, on the basis of a contract that would be satisfactory, feeling, when we were doing it, too, that there would be revisions, and

that we would accept recommendations, if possible, made by
2122 this particular bargaining committee.

[894] But the skeleton, or framework, was arrived at after a great deal of thought, and consulting of all sorts of diagrams, to find something that we felt would be the skeleton of a workable arrangement.

Q. And this provision was in your original skeleton contract which you agreed to submit? A. Substantially. There were some changes there—substantially it was the same.

Forty hours a week has been our standard pay week work, and a five-day week.

The hours of employment for maintenance men, engineers
2123 and firemen—more than forty-four hours—that has been changed, under our old arrangement, but I think the skeleton we drew up—I think there were fifty-four hours permitted for some firemen or maintenance men.

When we finally got together with the bargaining committee on this particular paragraph, it was changed from fifty-four to forty-four hours.

Q. Now, in the fourth—prior to that. The rest of the provisions except for the change from fifty-four to forty-four were provisions which were included in the original skeleton of it. A. I would like to read it further.

2124 [895] Trial Examiner Korey: We will take a five minute recess.

(Whereupon a recess was taken for five minutes, after which the following proceedings were had:)

Trial Examiner Korey: Gentlemen, you may proceed.

Q. (By Mr. Graham) As to the four provisions; that provision stating that the employees agreed to give a week's vacation—is that concession in any way different from the concession which was outlined in the meeting held on the twentieth of July? A. Well there was no concession in the meeting held on the morning of the twentieth of July. We, as I say, it was an informal discussion as to what we could do, and we had to haggle and bargain among ourselves. When we find a thing is the very best we can do, that is final, and that when we discuss it informally on the twentieth of July, a week was the best we felt we could do, and that situation never changed. 2125

When we bargained with them, we asked them if a week would be satisfactory. Apparently, that was all that they expected at any time. 2126

Q. So that is the same reason you decided upon on the twentieth of July as being best in that regard? A. I wouldn't say decided; we felt.

Q. You felt? [896] A. We felt it was the best we could do.

Q. Now, as to the sixth provision of that contract; it reads:

> "The employees agreed that henceforth and during the entire period of this agreement July 10, 1940, they, or any of them, will not go out on strike."

2127

Q. Who proposed that clause? A. That was our proposal. That seemed to meet with their complete approval. As a matter of fact, some of them said they didn't want to hear the word mentioned of "strike" again.

Q. There was no protest on the part of any of the employees? A. No, there wasn't.

Q. Now the seventh clause of the contract, the second
2128 sentence, thereof, reads:

> "The employees or any of them, have not the right to demand a closed shop or a signed agreement by his employer with any union."

Q. Isn't the fact that the same provision that had been existing—that had been accepted upon by the company in the previous conference on the twentieth of July? A. As I say, we had very decided ideas in that regard.

Q. On the twenty-ninth? A. At any time, on the twenty-
2129 fifth, twentieth, back in 1902. We would have still insisted on a provision of that [897] type.

Q. Did the employees object to the insertion of that? A. By no means. They expressed themselves as perfectly satisfied.

Q. That clause is also the same clause upon which the company insisted on the twenty-ninth of July, isn't it? A. Yes, and the meeting was held and we told them we could not consider a closed shop.

Q. How about the latter part of that sentence: "They shall not and have not the right to demand a closed shop or a
2130 signed agreement by his employer with any union." A. That is something that we felt very strongly about, and that likewise, was acceptable.

Q. And that likewise, was a thing that the company had insisted throughout the period of the conferences? A. We had not insisted. We expressed a willingness at the time we conferred and bargained with Galvin that we were very much opposed to the closed shop or contract with the union. We had, at that time, the same opinion as we had when we drew up this proposed clause seven.

Q. So that on the twenty-ninth at the conference and in the conference which the officers themselves had before drawing up this contract, the company was opposed to set a signed agreement with any union? [898] A. That is right.

Q. Well, now, in your previous testimony, you have stated that the employer was not unwilling to sign an agreement with the union.

Mr. Mann: I object to that; there has been no such testimony.

The Witness: I don't even get the question.

Trial Examiner Korey: Read the question.

Mr. Mann: I will withdraw it.

Q. (By Mr. Mann) Now, I have one or two more questions which I have noted down:

Before continuing, however, I would like to ask whether or not you have any further recollection as to the shop department in which the mimeographing was done. A. No I couldn't. Of course, we are making a sincere effort to finding out, and I believe I can.

Q. Has that particular shop been used by the company before for mimeographing work? A. Yes.

Q. Very often? A. No it is not often, that we have mimeographing work. Maybe once a year. Maybe not once in two years, but whenever we have occasion to have a mimeograph letter done, they do the work.

Q. Over a period of how many years has this particular [899] company being doing your mimeographing for you?

Mr. Mann: I object to it as immaterial.

Trial Examiner Korey: We will allow it.

A. I couldn't say how many years. I imagine two years. I
2134 know very well the firm that formerly did it, a fellow by the name of Gray, who was located opposite the post office building in Brooklyn. He did all of our work up to a few years ago, and contracted consumption and went away. From then on, it went to this new place, and I should think that was two years.

In the two years, they perhaps had three jobs done.

Q. Now, I call your attention to respondent's Exhibit No. 10, the petition; reading: "You have a copy of it before you." A. Yes.

Q. Now, on the second page of that petition you will notice
2135 that the information in the upper right hand corner is crossed off, and the word, "Foremen" is written there. A. That is right.

Q. And you will notice that farther down in that column, another name is crossed off, and the word, "Foreman" is written by that signature. A. That is right.

Q. I would like to ask you when those signatures were crossed off? A. I haven't the faintest idea. I know that it was on [900] the morning of the morning of the fifth. Two or three supervisors upstairs, spoke to me, and said that they had put their names on this contract.

2136 Mr. Mann: It is not a contract.

The Witness: On this nominating petition, and they would like to remove their names from such petition, and I told them they had better speak to the committee men that solicited their signatures, and they could do what they wanted, either leave it on, or take it off, and I assume that the Board went to the committee men that they had originally been approached by.

Q. Do you know the names of any of the foremen appearing upon this petition? A. I would have to go over every 213
name here. If you care to have me do it, I will.

Trial Examiner Korey: All right, go ahead.

The Witness: There was one on here. I would hardly say that he is a foreman. He might be considered—he should be distinguished from the others in the class. He is our repeating clerk. This John Flanigan that has been mentioned here. He is what you call a repeating clerk.

Now, whether he comes under the category of foreman, it is difficult to say. He has really no one under 213
him that takes orders, but a good deal of his work is clerical, although he does some manual work upstairs. He is, I think, [901] the only one that that designation covers.

Trial Examiner Korey: At the last—

The Witness: That is John Flanigan here (indicating).

Trial Examiner Korey: Off the record.

(There was discussion off the record.)

Trial Examiner Korey: Gentlemen, you may pro- 213
ceed. On the record.

Trial Examiner Korey: Do you consider him in a supervisory capacity?

A. I would not say so.

Q. Has he got charge of that department? A. He is the one man in that department.

Q. He is the one man in charge of the repeating department? A. He is the only employee; he is there himself. But he is a clerk.

2140

Q. (By Mr. Graham) Was there any others? Have you gotten through the list? A. That is the only one that I have any doubt about. There is no one else.

Q. Are there any others?—Assistant foremen, on the list? A. Well, Assistant Foreman, is the title that is more honorary, than carries anything with it.

Trial Examiner Korey: Do they have any supervisory capacity?

2141

A. No, they haven't. You might say that they are assis- [902] tants to the foremen; they are their right hands.

Trial Examiner Korey: Are they so designated?

A. That—they are the first—the foreman considers him an assistant, if you would say so. But they are not recognized on our payroll as foremen, or come under the foremen.

Trial Examiner Korey: If the foreman was absent, would the assistant take his place for the day?

2142

The Witness: I don't think so. I think that the superintendent would step down and do it. I don't think that would be so.

Trial Examiner Korey: How many assistant foremen are there? Off the record.

(There was discussion off the record.)

Trial Examiner Korey: On the record. Gentlemen, you may proceed.

Q. (By Mr. Graham) On your direct examination, Mr. Healey, you testified as to the question raised by Bertha Grossman for pay for Christmas and New Years. When did she raise that question? A. At the bargaining meeting held on September tenth.

Q. On the tenth of September, at this meeting which you held, she did raise the question of whether or not women should not be paid for New Years and Christmas? And other holidays? [903] A. Yes, and they exchanged some banter on the subject. The males on the Board said they wanted equal rights, or nothing like that.

Q. So this was brought out at the same time as the other matters you were discussing on the tenth? A. Yes.

Q. Why wasn't it included in the contract? A. We decided it was inadvisable to put it in there. It was simply an agreement that we decided on, but probably next week we would have four or five days to concede to that. And we suggested putting it in, as a matter of fact, but they agreed that it wasn't necessary to put it in the contract. As for the first of the year, we might start—maybe when we discovered we had a fairly good six months this year, we might be able to give them four days, so there would be no sense of writing a contract with two days in it, when, before the expiration of the contract, we might be able to give them four.

Q. This contract was not to expire until the first of the year? A. July, but, as I said before, our books are closed twice a year. On the thirty-first of December, we would have closed another six months period.

About the tenth or fourteenth of January, we would have an approximate idea as to whether we lost money, or made [904] money, and if so, how much. And at that time, it

is possible, it is our intention to give them more days than
46 two.

If we had in this contract two days, and we would be able to give them four days, it would be futile to put it in there, as this contract does not come up for further consideration until the middle of July—July tenth, or something like that.

Q. It will come up until both these holidays have passed; is that correct? A. That is right.

Q. It is not quite clear to me from your answer, who it was that didn't want it in the contract. A. We all decided it was unsuitable; it was an exchange of views. It would have
47 been all right to put it in there if they insisted upon it.

But after our explanation that maybe after January we could give them more, they decided to leave it out, and just have a general agreement.

Q. I would like to ask you on the record, whether you now care to recall for us, first, and ascertain whether or not—. A. As I say, there is nobody over them; I have in my desk a selection of cards that are a set type, and perhaps there are twenty—I have to do all the advertising over there, and every printer and multigrapher—

[905] Trial Examiner Korey: If you insist on that,
48 Mr. Graham, perhaps if we get a Brooklyn Red Book, and he look under mimeographing, that would refresh his memory.

Mr. Graham: That will be all with this witness.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Gentlemen, on the record, you may proceed.

Subject to getting this name, or any other information or proof, with regard to the name of the mimeographing company, the government, as I understand it, or the Board, is resting on the cross examination of this witness.

Mr. Graham: Yes.

Mr. Mann: Are you through with him now, Mr. Graham?

Mr. Graham: Yes.

Redirect Examination:

Q. (By Mr. Mann) Now, Mr. Graham in his cross examination has directed certain questions to you, regarding your direct examination of yesterday. The first thing he asked you about was that telegram.

You said July sixteenth. I call your attention to the telegram. It is dated July fourteenth; did you notice that? A. Well, I think in a further answer, I concluded that I must be mistaken about this particular date, that it was the fifteenth.

[906] Q. Fifteenth or the fourteenth? A. It is—

Q. Have you any definite recollection of the date? A. I have no definite recollection of the date, and so testified.

Q. Now, you were asked also about your confusion as to the name of the union. Is it a fact that in two different documents that were sent to you by the union, there are two different names? I will refer to the telegram, which is respondent's Exhibit No. 1, and to the letter of August sec-

ond, signed by Anderson, which is Board's Exhibit No. 5.

152 Are there two different names on those documents?

Mr. Graham: I object to the question because it is ambiguous.

Mr. Sklar: The document speaks for itself.

Trial Examiner Korey: We will sustain the objection and the record will show it.

Q. (By Mr. Mann) Now, there has been offered in evidence here, a paper, which is Board's Exhibit No. 12, which is called, "The Baker's Journal," and Mr. Graham referred to
153 this paper as one which Galvin showed you on either July twentieth, or July twenty-ninth, when he came. I believe he said the twentieth.

Now, this is the paper which Mr. Galvin was exhibiting to you for the purpose of identifying his connection, with [907] the union; is that correct? A. That is correct.

Q. I called your attention to the paper, and to a paragraph on page two of this exhibit, which is enclosed in red markings. You didn't put those red markings there, did you? A. No.

Q. That was there when he showed it to you, or has it been put there since by somebody else, or don't you know? A. I
154 believe it has been put there since.

Q. Now, I call your attention to the wording in that paragraph: "Brother William Galvin, business representative of the National Biscuit Company, Local 405, of greater New York." Do you see that in there? A. Yes.

Q. Is that a name that you ever heard about before? A. A. Not—not National Biscuit Company, Local 405. We have heard of National Biscuit Company, but not Local 405.

Q. I didn't ask you whether you heard of National Biscuit Company. A. Not Local 405.

Q. Was that a name that appeared on Board's Exhibit No. 5 or respondent's Exhibit No. 1? A. That was not.

Q. Now, up to that point, had you seen, or had there been [908] shown to you any original signatures on any application blanks, or on any blue cards such as you spoke about, and such as you testified to, both on direct and cross examination? A. There had not.

Q. And when I say, "had those been shown to you," I mean either by Mr. Galvin or by Mr. Bicariello, or by Mr. Anderson or by Mr. Sklar? A. By none of them.

Q. What is your answer? A. By none of them.

Q. Now, reference has been made on cross examination to Mr. Balleisen, of the Brooklyn Chamber of Commerce; do you know Mr. Balleisen? A. I do.

Q. How long have you known him? A. I should think ten years or more, six years—quite a number of years, anyway.

Q. How long has your firm been members of the Brooklyn Chamber of Commerce? A. Oh, I should think, ten years.

Q. What is the Brooklyn Chamber of Commerce?

Mr. Sklar: Objected to.

Mr. Mann: They brought it up.

Mr. Sklar: Does he know?

[909] The Witness: I should know. I will give my understanding of what it is.

Mr. Sklar: If you know personally what it is, I have no objection to it, Mr. Healey.

Q. (By Mr. Mann) He is a member; do you know what the
2158 Brooklyn Chamber of Commerce is? A. Yes.

Trial Examiner Korey: Tell us what it is.

The Witness: It is an organization run for the betterment of Brooklyn business, to take care of problems that might be developed by business men in the Borough.

Q. (By Mr. Mann) And when you have—your firm—as a member of this Brooklyn Chamber of Commerce—whenever you had a business problem, whether it is a labor problem,
2159 or some other kind of problem in business, do you consult the Chamber of Commerce as to the problem which is confronting you? A. We do.

Q. I think you mentioned that Mr. Sanford is a member of some— A. Transportation committee of the Chamber.

Q. What is the transportation committee of the chamber? A. They handle the transportation problems, as they relate to shipments of freight out of Brooklyn, and in to Brooklyn.

[910] Q. In the Brooklyn Chamber of Commerce, have they consulted with you, or do they consult with you on tax problems also? A. Tax problems, as well.

Q. What other problems have you consulted with the
2160 Brooklyn Chamber of Commerce? A. Legislation, for one thing—any problems that we don't feel qualified to handle without assistance.

Trial Examiner Korey: I don't remember, Mr. Healey—did you testify that you did call on Mr. Balleisen or the Brooklyn Chamber of Commerce for assistance in this particular labor problem?

The Witness: No, I didn't say anything about that, Mr. Korey.

Trial Examiner Korey: Did you know?

The Witness: No, I didn't.

Trial Examiner Korey: Did you call on the Brooklyn Chamber of Commerce?

The Witness: Me, personally?

Trial Examiner Korey: Did your company call on the Brooklyn Chamber of Commerce, Mr. Balleisen, in regard to these labor problems—to this labor problem?

The Witness: I believe I said I would not be surprised if it did. I believe we did.

Q. (By Mr. Mann) You have never had a copy of that union application, which has been offered in evidence here, [911] as Board's Exhibit No. 8—you have never seen that at all? A. At no time.

Q. The first time, was when a copy was offered in evidence at this hearing; is that correct? A. That is correct.

Q. Now, so that we have it clear, on the twenty-ninth of July, there was this conference that you testified to yesterday, with Mr. Galvin, Anderson, Bicariello, and Sklar, which, you say, lasted approximately two hours and fifteen minutes? A. That is correct.

Q. Mr. Graham was asking you this morning, questions relating to what was going on at that conference. Now, just tell us, again, how this discussion took place. First of all, as I understand it, you said yesterday that you had had this Board's Exhibit No. 2, which was a demand from the union.

Mr. Sklar: Excuse me. I am not trying to enter
64 his questioning. I submit, Mr. Examiner, that the question is entirely leading, and if he wants the witness to testify, he should ask him a question which he can answer.

Q. (By Mr. Graham) Respondent's Exhibit No. 2, which was a union contract—that had been in your possession how long? A. Nine days.

[912] Q. And when they came in on the twenty-ninth of July, tell us what transpired there, with reference to that contract. How was it done?

65

Mr. Sklar: That is objected to on the ground that it has already been answered.

Trial Examiner Korey: We have gone over it not only once, but at least three times.

Mr. Mann: All right.

Q. (By Mr. Mann) Now, who was the first one that spoke to you about the fact that the workers had selected a bargaining committee? A. Bill McGann.

Q. Was that after the workers had come back to work, beginning August twenty-fifth, as you testified to yesterday?
66 A. Yes, it was—

Mr. Sklar: Mr. Examiner, excuse me. I object to the question and move to strike it out on the ground that the witness has already testified that he has no knowledge of that.

Mr. Mann: That is what I am coming to.

Q. (By Mr. Mann) Did you know how they had been elected? How a committee had been elected? A. Did I know? No; I testified it was hearsay. 2161

Q. Did anybody else besides McGann tell you about being elected to the committee? [913] A. Yes, when they came down, the entire crowd said, "We had been elected."

Q. Which entire crowd? A. The eight on the committee.

Q. In other words, you spoke not only to McGann, but you spoke to the others? A. Subsequently, yes.

Q. The others that you spoke to are the other seven mentioned on the petition, which is Respondent's Exhibit No. 10? A. That is correct.

Q. Did Bertha Grossman speak to you? A. She did. 2161

Q. Did you send for her? A. No.

Q. Did you send for anybody? A. I sent for no one.

Trial Examiner Korey: What time did they come there?

The Witness: What do you mean, on September tenth?

Trial Examiner Korey: Yes.

The Witness: I think, I said ten o'clock.

Trial Examiner Korey: Is that the time they were selected or elected? 2161

A. Oh, off and on as I went through; I walked through the plant here and there.

Trial Examiner Korey: Did they tell you in a body on [914] that day?

A. They told me in a body on that day too.

Trial Examiner Korey: At that meeting?

2 170 The Witness: Before that meeting.

Trial Examiner Korey: Before that meeting of September tenth?

The Witness: Yes.

Trial Examiner Korey: Now, could you tell us what words they used? That they were selected by the employees, or what words did they use?

The Witness: As I remember it, they said they were elected by the workers in the plant.

Trial Examiner Korey: Go ahead.

2 171 Q. (By Mr. Mann) Did Sweeney speak to you? A. He did.

Q. Did Angelo Gabrillo speak to you? A. Yes.

Q. Anna Bauer? A. She did.

Q. John Mahnken? A. He did.

Q. Louis Moscoln? A. That is right; he did.

Q. And Jenny Marola? A. She did.

[915] Q. Did you send for any of these people? A. No.

Q. They came to you voluntarily; is that your testimony? A. They came down to the office without solicitation.

Q. And you say they came down about September ninth?

21 172 Trial Examiner Korey: He says the tenth.

A. Well; they came down two days, the ninth and the tenth. When they came down on the ninth—I think they came down on the eighth and they had no evidence that they were duly listed on the eighth. I think that is the first time I spoke to any of them.

Q. (By Mr. Mann) And when they had no evidence that they were elected and they said they were, what did you say? A. Well, I told McGann that he would have to give some proof that they were duly selected by the employees.

Q. And then later they got this group, which were the signatures, not only of the committees, but the signatures of the workers; is that right? A. That is right.

Q. And that is all contained in the respondent's Exhibit No. 10; is that right? A. That is right.

Trial Examiner Korey: You say they came down—you say that this committee came down on the eighth?

[916] The Witness: Yes, they came down on the eighth, figuring that they would enter into anything else like that—

Trial Examiner Korey: What time was that?

The Witness: That wasn't until maybe three or four o'clock in the afternoon.—Three o'clock in the afternoon on the eighth.

Q. (By Mr. Mann) Did you have anything to do at all with the obtaining of these signatures that are contained on the side of Exhibit No. 10? A. I did not.

Q. Do you know how they were obtained? A. I do not.

Q. Did you see them signed? A. I did not.

Q. Did you authorize anybody to supervise the signing? A. To the contrary. We called every supervisor to stay far, far away.

Q. Do you know whether they were signed in the shop, in the street, or in any—or in their homes, or where? A. I have no idea where they were signed.

Mr. Mann: That is all.

Recross Examination:

2176 Q. (By Mr. Graham) I understood in your direct—not redirect—that you had given instructions that if any foreman participated in the signing of that petition of signatures, [917] he would be discharged? A. That is correct.

Q. And those instructions were issued by you or by whom? A. Mr. Sanford, in my presence.

Q. In your presence? A. Yes.

Q. When did he give those instructions—at what time of the day did Mr. Sanford issue the instructions?

2177 Mr. Mann: Instructions as to what?

Mr. Graham: To the discharge of any foreman who participated in the signing of any petition.

A. It was the day that McGann asked for the assistance in drawing up the paper.

Q. (By Mr. Graham) Apparently, Mr. McGann at least discussed such assistance with you on several different occasions, the last occasion apparently was the morning of the ninth. A. I believe it was that day—no, I would approximate the date as the seventh of September that Dorsey was instructed to have nothing to do with any committee forming 2178 or to refrain from anything which might interfere with any arrangement they planned to make in the shop.

(The reporter read the last question and answer.)

Mr. Graham: That is official?

The Witness: That is my recollection of the date. [918] As I say, this matter of committee formation was something that I didn't memorize.

Q. (By Mr. Graham). Now, McGann approached you on that day, on the seventh of September? A. On the ninth.

Q. But the instructions were issued on two days after McGann first approached you? A. Two days prior.

Q. Two days prior? Yes. Well, I thought you testified that the instructions were issued on the day that McGann first approached you as to the authorization? A. No, I don't recall it.

Q. Now, you have testified that McGann approached you on the eighth of September as well as on the ninth; is that correct? A. I believe so.

Q. But not on the seventh? A. No, as I say, those dates or something—

Q. I just want to get it clear. A. As I say—all this happened within a few days of the ninth. To attempt each day, and write it down, I couldn't attempt it.

Q. Is that what you said, that Mr. Sanford, in your presence, gave orders to Dorsey that he was to instruct all foremen, that if they had anything to do with the signing of [919] this petition, they would be discharged? A. No, not signing—I didn't say anything like that—anything to do with the calculation of these petitions or anything that might be constituted with its interfering with circulation.

Q. If they had anything to do with the circulation of this petition, they would then be discharged? A. Yes.

Q. And did Dorsey actually issue those instructions to the foremen? A. I believe he did—I know he did.

Q. Were you present when he did that? A. No, he told me—Dorsey—

Q. He told you that he had issued those instructions? A. That is right.

Q. If those instructions had been actually given, how does
182 it happen that two foremen actually went so far as to sign the petition themselves? A. They were approached by the committee. They had nothing to do with the solicitation of the signatures, or anything else. The committee members went up to them and they understood there, that they were to sign it. But their instructions were that they were not to have anything to do with the solicitation of signatures or anything connected with the petition. Now, when they were asked to [920] do that by a committee member they felt it was their duty to sign it.

Q. The committee members, therefore, didn't know that
183 they should sign it—

The committee members who approached them for signatures, apparently didn't know that they should not sign it? A. I presume so; I don't know.

Q. If the committee members didn't know that, who asked to have that—to have their names scratched off? A. Two foremen were stricken off there.

Q. Who required that the names be stricken off? The foremen who signed it? Who had their signatures removed? A. They did themselves.

Q. Who told them to do so? A. Nobody.

Q. They apparently felt when they signed that they should
184 sign. A. They didn't know. They came to me later, and asked if it was a requirement. They felt, after they were on there, that they should not be grouped with the employees and they came to me and asked if we would object if they had their names taken off.

I said it was entirely up to them. We had no part of the gathering of the names, and it was immaterial to us.

Q. Did you tell them they could have their names off? [921] A. It was up to them entirely.

Q. Now, your attention has been called to a fifth paragraph in the "Baker's Journal" which refers to Mr. Galvin as business representative of the National Biscuit Company, Local 405 of greater New York.

Is today the first time you saw that particular paragraph? A. No, he showed every paragraph that had his name in it.

Q. Did you notice the reference to the National Biscuit Company, Union Local 405? A. We noticed that.

Q. Did you point that out at the time? A. What?

Q. Did you point that out at the time? A. No. I just kept it in the back of my head, and I thought he was a very busy gentleman to be connected with so many gentlemen.

Q. And you didn't see fit to bring it out in any of your testimony? A. No. As a matter of fact, I have had such a mess of facts to remember, that that would easily slip my mind.

Q. Did you look over the paper at all? A. At the time?

Q. Yes. A. Yes.

[922] Q. Did you notice that the "Baker's Journal" is published by the Baker's Grocery and Confectionery Worker's International Union, and printed in the upper left-hand corner of that sheet? A. No. I did not. If I were to wade through all the stuff that is in this paper, it would take all afternoon.

The only thing I did give my attention to was: Galvin says, "Here is a paragraph in here where I am mentioned," and he went around to some other part of the paper, "Here is another paragraph, in which I am mentioned." And every place his name occurred, he pointed out to us.

Well, to read everything in this pamphlet—so called newspaper—and to look under the fine type up here under "Baker's Journal," would be something that would never occur to me.

Q. That statement does indicate the union which is responsible for the publication of the Journal, does it not? A. I would say so, yes. Of course, anybody could print anything they wanted in there.

Q. Presumably, the person who got out the journal could, if no one else could. A. Well, that—

Trial Examiner Korey: Well, we won't go much further into that testimony. We have sufficient on that, I believe.

[923] Q. (By Mr. Graham) You stated that you were extremely suspicious of Galvin as a result of the examination which you gave to this paper which he produced? A. I never made such a statement. That added to suspicions I had—that added to suspicions that I had.

Q. Did you not, as a result of that suspicion, examine this paper in any way to determine whether or not it was published by the Bakery and Confectionery International Workers Union?

Mr. Mann: I object to that, I think we are wasting a lot of time.

Trial Examiner Korey: I will sustain the objection; we won't go any further into that proposition.

Q. (By Mr. Graham) Didn't you bring a blank application with you on the twentieth of July? A. A blank application?

Q. Yes. A. I can't possibly recall it.

Q. You don't recall it? A. If he did, it was something that I never knew. The only thing which I saw him produce that day was the card as I testified.

Q. But you don't recall whether he left a blank or not? A. No.

Q. This won't open any further discussion—but you do recall, [924] do you not, that this copy to which we have been referring was also left at the plant? A. This paper?

Q. Not this particular one, but a copy. A. No, it was not. He seemed to be very proud of the mention of his name in the paper, and took it away with him.

Q. Now, on the tenth of September, you testified that the members of the comm e spoke to you, and Mr. Mann then read their names, and you answered as to which names, as they—as having spoken to you? A. Yes.

Q. Did each member of the committee speak to you separately? A. They gathered around a table such as this (indicating) and spoke to me.

Q. And that is the conversation to which you are referring? A. Before they went into the room, they gathered in a group around the door, and they spoke to me then—several times.

Q. It was a general conversation? A. Yes. Everyone of them had something to say, and I had nothing to say to any one of them.

Q. Now, you said that Mr. McGann approached you as to his election on the eighth of September, saying that he had [925] been elected, and that he came to you on the first day, on the eighth of September? A. That is my recollection of the date.

Q. Did he say where he had been elected? A. No.

Q. Or when? A. No. He just said that he had been elected
194 one of the bargaining committee.

Q. And he gave no details, whatsoever? A. No details.

Q. You didn't ask him anything about the election? A. No. I just said, "Congratulations, Bill." "I am glad to see you distinguished."

Trial Examiner Korey: Did you ask him whether he was elected by a majority?

The Witness: No. I assumed they worked out some satisfactory arrangement.

Mr. Graham: That is all.

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Redirect Examination:

Q. (By Mr. Mann) These different people on the committee are from different floors, aren't they? A. Yes, they are.

Q. And some are men, and some are women? A. That is right.

Q. Would you say that each one of these people mentioned [926] there, represent a certain number of men, and a certain number of women in their department? A. I believe that is the general idea of the committee.

Q. You had nothing to do with that, however, did you?
196 A. No.

Q. I am asking you something about Dorsey getting instructions as to not to interfere with the signing of something. Now, I don't want you to be confused as to whether that relates to the petition to the contracts, which were to be signed. A. It relates to anything that pertains to dealings with our employees. He was a factory superintendant, and was told to stay away from them on any subjects which might

become considered as having connections with the committee, or contracts, or anything else. 219

Q. Has any person who has signed this petition, either a committeeman, or a worker, or who has signed any one of the contracts, came to you since the date of the signing and said anything about the signature? A. They have not.

Mr. Mann: That is all.

Mr. Graham: That is all.

(Witness excused.)

Trial Examiner Korey: Mr. Mann, I don't want to 219
tell you how to try your case—far be it from me to say, with [927] your wide experience—, but you did mention something this morning, I believe, it is on the record. When Mr. Graham asked something about these eight girls, and one in particular, Miss Anna Bauer, you said that you would have not only her, but all the other seven, making up the total of eight on the committee.

A good deal of this testimony referring to this committee, et cetera, was adduced, and I was wondering whether you were going to have them here.

I don't see them here. 219

Mr. Mann: I am very glad you asked me that question, Mr. Examiner. I would like the record to show fully my answer to you.

Trial Examiner Korey: Make it brief.

Mr. Mann: I don't know whether the record shows that I said that I would have them here. However I decided not to have them here for this reason; I am

satisfied, now, as I was on Saturday, when I made my motion to dismiss the complaint, that the Board had failed in every respect, to prove any part of their complaint, namely, that there was no bargaining—

Trial Examiner Korey: Are you going into your motion again?

A. No, I am giving you the reason why I am not having them here,—that may interfere with anybody—

[928] Trial Examiner Korey: Of course, frankly, as I told you at the very start of this, last Thursday, that I was not inclined to tell you or ask you why you were doing things. I was just asking you whether or not you expect to have these witnesses.

Mr. Mann: No, I don't expect to have them.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record. Proceed, gentlemen. Any other witnesses on the part of the respondent?

Mr. Mann: No, I don't intend to call anybody else.

Trial Examiner Korey: And the respondent then rests?

Mr. Mann: We rest; I want to renew my motion to dismiss the complaint—have you some rebuttal?

Mr. Graham: In view of the fact that several particular matters have come up, yes.

Trial Examiner Korey: Off the record.

(There was a discussion off the record.)

Trial Examiner Korey: Back on the record. It is nearly five o'clock, and you say, Mr. Graham, that you haven't got some rebuttal witnesses that you expect this afternoon? 220

Mr. Graham: I would say that I didn't expect them this afternoon, because I intended—because I anticipated [929] that counsel for the company would call several witnesses, whom he has not called, and I thought that we wouldn't—that we would be busy all day with the witnesses being presented.

Trial Examiner Korey: That is why—Mr. Mann decided not to call them.

Mr. Graham: I haven't got them. 220

Trial Examiner Korey: You haven't got them.

Mr. Sklar: We request that the case go over until tomorrow, if it is possible, so we may produce some rebuttal evidence.

Trial Examiner Korey: We adjourn until tomorrow morning at 9:30 a. m.

(Whereupon, at 5:05 o'clock p. m., October 19, 1937, the hearing was adjourned to 9:30 o'clock a. m., October 20, 1937.)

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[930].

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

206 Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—and—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY.

207

Room 235, Old Post Office Building,
New York, New York,
Wednesday, October 20, 1937.

The hearing was resumed, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

H. R. KOREY, Esq.,

Trial Examiner.

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Appearances:

CHARLES E. GRAHAM, Esq., (233 Broadway, New York, New York) on behalf of the National Labor Relations Board.

KOTZEN, MANN & SIEGEL, Esqrs., (51 Chambers St., New York, New York) attorneys for Respondent, by
ABRAHAM MANN, Esq., and
JOSEPH YASPAN, Esq., of Counsel.

KALMAN SKLAR, Esq., (521 5th Ave., New York, N. Y.) appearing for Bakery & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity. 2209

WILLIAM A. GALVIN, Esq., (245 West 14th St., New York, N. Y.) President of Bakery & Confectionery Workers International Union of America, Local 405.

[931]

Proceedings

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Trial Examiner Korey: All right, we will go ahead. I understand, Mr. Mann, that you wish to recall Mr. Healey to correct some part of his testimony, although you rested yesterday, you wished to call him back for that purpose.

Mr. Mann: To clear up one or two things in his testimony that are not clear as yet.

Trial Examiner Korey: All right. If you call any other witness it will be for the same purpose?

Mr. Mann: I do not expect to call any other except to prove something on the cards.

2211

WALTER J. HEALEY a witness recalled by and on behalf of the respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination:

Q. (By Mr. Mann) Mr. Healey, there are two things I want to ask you about this morning. One is, you testified

yesterday that in ordering these mimeograph—in ordering
2212 the mimeographing of these contracts, a copy of which has been offered in evidence here as Board's exhibit No. 10, first of all, you could not recall the name yesterday of the mimeographer, is that right? A. That is right.

[932] Q. After you went back to your office last night, did you refresh your recollection from any documents that you had in your possession in your office at that time? A. I did.

Q. I recall yesterday you said that you thought you had paid for the mimeographing from the petty cash. A. That is right.

Q. That is what you said? A. Yes, sir.

2213 Q. Now, I show you a receipted bill on the stationery of this mimeographer and ask you whether this is the bill rendered by the mimeographer to your company for the services rendered in mimeographing these contracts. (Showing witness a piece of paper, which the witness examined.) A. Yes, that is it.

Q. (By Mr. Mann) Now, you did not pay the amount from petty cash, as I notice, you paid it by a voucher, is that right? A. Yes, that is right. Our records show a voucher.

Q. The amount is how much? A. The amount is $14.25, the date of the voucher, September 14th, and the voucher
2214 number is 760206.

Mr. Mann: I will offer that in evidence.

The Witness: I might say, too, that my referring to multigraphing or mimeographing was a lack of technical knowledge. [933]

Mr. Graham: The date of the bill is what?

The Witness: September 10th, 1937.

Mr. Graham: I would at this time like to reserve Mr. Sklar's right to object in case he wishes to do so.

Trial Examiner Korey: There being no objection at the present time, it will be marked into evidence as respondent's exhibit No. 12.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 12, in evidence.)

Mr. Mann: That is all I want ta ask you about.

Mr. Graham: I think I have no questions, but, again, if Mr. Sklar feels that he has, I would like to reserve that privilege.

Mr. Mann: All right.

(Witness excused.)

Mr. Mann: I should at this time like to call Mr. Anderson for a few questions.

Trial Examiner Korey: I do not like to open cases that way, because we can go on indefinitely. I will permit this questioning of Mr. Anderson with the understanding that there are only one or two questions that you wish to ask.

Mr. Mann: That is all.

JAMES ANDERSON a witness called by and on behalf of the Respondent, having [934] been previously duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Mann) Mr. Anderson, I just want to ask you one thing for the record. In these application cards that

have been offered in evidence here, I may have already asked
18 this question, but I want to make sure, they have been offered as Board's exhibit No. 8, when I looked over those the other day, I noticed that every one of them had alongside of Question No. 33, which read, "Local initiation fee charged by applicant," the mark in pencil of $2.00. That is on each one of them. Are you prepared to say whether or not these people who signed these cards, which are offered in evidence as Board's exhibit No. 8, paid that $2.00? Or, is it your understanding that they did not pay anything at all? A. It is my understanding that they did not pay anything. That is the custom of the unions, who have always
19 put the initiation fee of the union on there.

Q. But, the point is, they did not pay anything? A. Yes.

Q. And that $2.00 which is mentioned there has never been received from any members, is that right? A. Yes.

Mr. Mann: That is all.

[935] Trial Examiner Korey: Just to have the record clear, what does that say there?

The Witness: Local initiation fee charged applicant, meaning the initiation fee for the local, is always $2.00, as it varies in various locals, and when these applications are sent to Chicago, the local
20 initiation fee is always put on it because of the difference in various locals.

Trial Examiner Korey: All right.

Mr. Mann: That is all.

Mr. Graham: I, again, reserve Mr. Sklar's right in case he wishes to ask questions.

Trial Examiner Korey: All right.

(Witness excused.)

Mr. Mann: I will rest.

Testimony of August Picariello—Direct.

AUGUST PICARIELLO a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: 2221

Direct Examination:

Q. (By Mr. Graham) What is your address, Mr. Picariello? A. 831 Sip Street, Union City, New Jersey.

Q. Are you an officer of the union, Mr. Picariello? A. Yes, I am.

Q. What office do you hold? A. Trustee.

[936] Q. How long have you acted in that capacity? A. Since the first of the year, to May, Inside Bakery Workers, when we changed to the Bakery & Confectionery Workers Local 405, there. 2222

Q. On the 14th of July, was there a count made of the application cards which had been filled out by the employees of the National Licorice Company? A. Yes.

Q. By whom was that count made? A. By me.

Q. What day—what time of the day, approximately, did you make that count? A. I counted them about—it must have been 7:00 or 8:00 at night.

Q. In the evening? A. Yes.

Trial Examiner Korey: What day are you speaking of now? 2223

Mr. Graham: Of the 14th of July.

Q. (By Mr. Graham) Approximately how many applications were there? A. About one hundred.

Q. And was it after that count had been made that the
2224 telegram was sent from Mr. Galvin to Mr. Sanford and the company? A. Right after that, yes.

[937] Q. Now, there has been testimony here that at two conferences you had with you a small bag containing documents of some sort, or, rather, I will say there has been testimony that at the conference held in the plant on the 20th of July that you were present and that you had with you a bag containing the documents.

I would like to ask you whether you had the application cards in that bag with you at that time? A. I had the applications in my bag.

2225 Q. Now, there has been some confusion as to the incident that resulted connected with those application cards. I would like to ask you, first, whether you offered to show the application cards to Mr. Sanford. A. I did.

Q. Upon what terms were they offered to Mr. Sanford for inspection? A. Well, we offered them to look at the cards, if he would find more than 51 per cent, would he recognize us as the collective bargaining agent.

Q. What did he say? A. He said that he did not know whether he would or not.

Q. Then, there has been a subsequent issue raised as to the second reference to the cards, at which time it has been
2226 said you refused to show them to Mr. Sanford. A. I refused to show them because he said, he told us to [938] leave the applications there with him and he would check with his payroll and he would see if we had 51 per cent. I think Mr. Galvin asked him, "If you did check them over and found 51 per cent, would you recognize us as the collective bargaining agent?" and he said that he did not know what he was going to do.

Q. Now, thirdly, were you present on the 2nd of August when Mr. Sanford—when Mr. Anderson called the plant after the strike had occurred? A. Yes, I was. 2227

Q. And did you hear Mr. Anderson's conversation? A. I heard part of it.

Q. That is, you heard what Mr. Anderson said? A. Yes.

Q. And did Mr. Anderson later tell you the gist of the conversation as it had actually occurred? A. Yes; he reported to me.

Q. Do you know whether Mr. Anderson told Mr. Sanford on the telephone that the union had not called a strike?

Mr. Mann: Just a minute. I object to that. I object to what Anderson told Picariello that he, Anderson, told Sanford. I mean, that is clear hearsay. You cannot bind us by it. 2228

Mr. Graham: It is just that Mr. Picariello was there when Anderson made the statement.

[939] Mr. Mann: Mr. Picariello is now attempting to testify to something that Anderson told him that he, Anderson, told Sanford.

Trial Examiner Korey: Were you standing near Anderson at the time?

The Witness: I was standing at Mr. Anderson's elbow when he was talking to Mr. Sanford. 2229

Trial Examiner Korey: You heard what he said to Mr. Sanford?

The Witness: Yes.

Trial Examiner Korey: We have had testimony by Mr. Healey that he was standing on the side of Mr. Sanford, and he was permitted to give his testimony.

Mr. Mann: He did not ask him that. He asked him
230 to testify what Anderson told him.

Trial Examiner Korey: You tell us what you heard Anderson say to Mr. Sanford.

Q. (By Mr. Graham) Did you hear Anderson say anything over the telephone to Mr. Sanford about that question? A. I heard Anderson say that the union had not called the strike.

Trial Examiner Korey: That is all.

Q. (By Mr. Graham) That all I need on that.

231 Now, in the conference which Mr. Anderson had with Mr. Healey at the plant on that same day, later in the day, [940] were you present at that time? A. I was there.

Q. And did you hear Mr. Anderson tell Mr. Healey that the union had not called the strike? A. I did.

Mr. Graham: That is all.

Cross Examination:

Q. (By Mr. Mann) In reference to this conversation that you said you heard Anderson make over the telephone on August 2 and later that day when Anderson talked to
232 Mr. Healey, is it your testimony that you heard Anderson say that he did not call the strike? A. Anderson said the union did not call the strike.

Q. The union did not call the strike? A. Yes.

Q. You are sure he said that? A. He said he did not call a strike, and the union did not call a strike.

Q. He said both, he said that he did not call a strike and the union did not call the strike? A. He also said he had no knowledge of any other official calling the strike.

Q. But the union had read in those picket cards on the night of August 2nd? A. They did not. 2233

[941] Q. Well, the workers had them on the morning of August 3, did they? A. They had them in the afternoon of August 3.

Q. Did you heard testimony here that around 11:00 or 12:00 o'clock of August 3, morning, more than 50 or 75, probably close to 100 pickets were around there with these signs similar to the one that has been offered in evidence here? Did you hear that testimony? A. I heard it.

Q. That is true, is it not? A. They did not have any picket signs.

Q. Is that true? 2234

Mr. Graham: I object to the question. It was not testified that all of these pickets had signs.

Mr. Mann: Suppose there were ten, or five?

Trial Examiner Korey: As far as you know.

The Witness: On the 2nd of August they did not have them.

Q. (By Mr. Mann) I am talking about the 3rd. A. I was not at the plant on the 3rd.

Q. You were not there? A. Not until the 9th.

Q. You do not know the condition in front of the plant on the morning of August 3rd? A. Them signs— 2235

[942] Q. You do not know from your own observation? A. No.

Trial Examiner Korey: You were not there?

The Witness: No.

Q. (By Mr. Mann) What were the conditions in the
2236 plant or in front of the plant during August 3 until the night? A. I knew of them.

Q. From what you, yourself, saw? A. No.

Q. That is what I want to know. Now, you said in answer to Mr. Graham that on July 14 there was a count made of the application cards. Did you use the word "application cards" in your answer to him? A. No; we used the word "applications".

Q. Are they cards which also have some signatures attached to them? A. No, sir.

Q. Did you hear Mr. Healey in his testimony talk about
2237 a blue card, did you hear him talk about a blue card? A. I did.

Q. Is there such a thing as a blue card, yes or no? A. No, not for application.

Q. I did not ask you whether it was for application or anything else. I asked you, is there such a thing as a blue card, which he was talking about? [943] A. He was shown a green card.

Q. You remember he said—

Trial Examiner Korey: The answer is, no, if it is not a blue card.

Mr. Mann: That is not the answer.

2238 Trial Examiner Korey: That is what he said, he said it was green.

Q. (By Mr. Mann) Is that a green card? A. Yes.

Q. Where is that? A. That is Mr. Galvin's membership to the Central Trade & Labor Council. That is what was shown him.

Q. That had nothing to do with the applications? A. Nothing to do with the applications.

Q. Wait a minute. Let me finish first. That card, which you say was shown to Mr. Healey by Mr. Galvin, or by you, or by Anderson on that 20th day of July, is not a card which you say refers to applications signed by members, is that true? A. That is true.

Q. Or signed by workers? A. Yes.

Q. Then, it is a card which you say is Mr. Galvin's identification as a member, of his membership somewhere, is that right? [944] A. In the Central Trades & Labor Council.

Q. In the Central Trades & Labor Council? A. Yes.

Q. That you say was the card he showed you? A. Yes.

Q. Has it any typewriting on it? A. To tell you the truth, I never saw the typewriting on it.

Q. O. K. Did you hear Mr. Healey say that there was typewritten signatures on that card, or those cards? A. I heard him say something about that, one card.

Q. Do you know what he is referring to when he speaks of that? A. He is referring to that membership card.

Q. That would just be one particular card, would it not? A. Yes.

Trial Examiner Korey: Whose membership cards?

The Witness: Galvin's membership card.

Q. (By Mr. Mann) That would be only one card? A. One card, yes.

Q. Didn't you heard Mr. Healey say that there were a number of cards that were shown with typewritten names on them? Did you hear Mr. Healey say that? A. I heard Mr. Healey say that.

Q. Do you know what he was talking about when he said that? [945] A. I do not know what he was talking about.

Q. All right. When these members—when these workers
2242 signed these pink slips, which is Board's exhibit No. 8, don't you transcribe that in some kind of a form on a card? A. Nope.

Q. Didn't you in this particular case? A. Nope.

Q. What is that, that you have in your bag, on the 14th day of July, when you came there? A. Showing—(indicating Board's Exhibit No. 8). This.

Q. Those pink sl A. Yes.

Q. Which is Boa.. xhibit No. 8? A. Yes.

Q. Do you want to tell us now that your members do not sign a card, Picariello? A. They do not sign a card.

2243 Q. And they have never signed a card? A. What do you mean by it, a card?

Q. You know what I mean by a card. A. They have signed application blanks, not cards.

Q. What do you mean by application blanks? A. These here (indicating Board's Exhibit No. 8).

Q. The pink slips? A. Yes.

[946] Q. That is the only thing they have ever signed? A. That is the only thing they have ever signed.

Q. In your union? A. Our union.

Q. And you have not made a resume or a transcript of that on any kind of a card? A. No, sir.

2244 Q. In other words, if somebody wanted to ask you to exhibit the evidence that you had indicating signatures by members, would you exhibit that for that purpose? A. Yes, this (indicating Board's exhibit No. 8).

Q. These pink papers? A. Yes.

Q. Board's exhibit No. 8? A. Yes.

Q. And nothing else? A. Yes.

Q. No, you say you counted those application blanks about

7:00 or 8:00 p. m. on July 14th, is that true? A. About that time, as soon as I came into the office.

Q. Well, there were a number of them signed on July 14th, is not that right? A. Sure.

Q. Do you know how many were signed on July 14th? A. No, I would not remember that.

[947] Q. Did you hear one of your witnesses say 43? A. Well, if there were 43 cards there—

Q. Do not call them cards. A. 43 applications.

Q. You see that mixes us up. A. There are 43 application blanks, and if they had that date on them, that is how many signed them.

Q. Those you say were signed at night? A. No, they were signed at 5:00 o'clock, after they quit work.

Q. Did you hear a witness, one of your witnesses, Landriscini, testify that he had made a telephone call to Mr. Galvin on the morning of July 14th? A. I heard him say that.

Q. You heard him say that? A. Yes, sir.

Q. Do you know anything about that telephone call? A. No.

Q. You were not there when it was made? A. No.

Q. You never showed those pink slips to anybody in the National Licorice Company, did you? A. No, I did not have to.

Q. You see, I did not ask you whether you had to. A. No, I did not show it.

[948] Q. I asked you what you did. A. I did not show it to them.

Q. Was not there some talk there on the 14th day of July and on the 20th day of July in which Mr. Healey or Mr. Sanford questioned the fact that you represented a majority of the workers? A. Sure.

Mr. Graham: I would like to have counsel correct
2248 that as to the dates. Your question related to both the 14th and the 20th.

The Witness: On the 20th.

Q. (By Mr. Mann) All right, on the 20th. A. Yes.

Q. They insisted by their questions directed to you that they wanted to be satisfied that you represented a majority of the workers? A. Sure.

Q. They asked you for proof, did they not? A. Yes.

Q. And when you, however, did not open your bag to show those pink slips, Board's exhibit No 8, is that right? A. There
2249 was—

Q. Now, wait, you know it is so easy to answer that yes or no. Did you open your bag to show Sanford or Healey those pink slips which you say you had in your bag on July [949] 20th and when they asked you to submit proof that you represented a majority of the workers, I know—I now ask you to tell me just yes or no did you take out those tickets and show them? A. I want to explain it.

Trial Examiner Korey: If you want to explain it, you will have an opportunity to explain it, but answer the question.

2250 The Witness: No, I would not open it.

Q. (By Mr. Mann) You would not open it? A. No, for the simple reason—

Q. I do not want any reason. A. I want to explain.

Q. I do not want any reason.

Mr. Graham: We can go through the reason if we have to. It seems superfluous.

Trial Examiner Korey: Give us your explanation of that. 225

The Witness: Because Mr. Sanford would not give us any satisfaction that we did show 51 per cent of the applications, even if he checked them with the payroll, if he would recognize us or not. So, we would not show him any names.

Q. (By Mr. Mann) But, Picariello, you testified in answer to Mr. Graham that when you asked Sanford—he said he did not know what he would do, isn't that true? A. That was not—

[950] Q. Wait a minute. A. That was not the answer. 225

Q. Did he say that he did not know what he would do? A. Well,—

Q. Did he say that? A. That was no answer to us.

Q. I did not ask that.

Trial Examiner Korey: He said he answered.

Q. (By Mr. Mann) And because he said he did not know what he would do. A. After he would—wait a minute.

Q. Please let me finish the question and then you answer it, and you can answer Mr. Graham as much as you want when he asks you questions. When he said he did not know what he would do, you then decided you would not show him the cards, is that right? Don't you remember that somebody said here that Galvin wanted to show him the cards and you said no. You stopped Galvin, is that true? A. I never stopped him. I had the applications, myself. I never stopped Galvin. 225

Q. I see. Have all of those cards—do you know who

signed all of those cards? A. The ones I made out I know and some that Jimmy made out.

Q. Jimmy is who? [951] A. Landriscina.

Mr. Graham: I would like to say now, if counsel contemplates going into the question of signing applications, a matter which was not touched upon in my direct examination, I object.

Mr. Mann: I had not asked the question.

Trial Examiner Korey: Well, why are you anticipating?

Mr. Mann: Always worrying about something.

Q. (By Mr. Mann) Did you and Landriscina supervise the signing of these cards?

Mr. Graham: I object.

Mr. Sklar: That is not proper rebuttal on cross examination.

Mr. Mann: The man has been put on here to testify about these application cards.

Trial Examiner Korey: As I said before, I do not like to limit these things. But, there should be a stopping off somewhere, otherwise we will continue with these forever.

Mr. Mann: But, there should not be a stopping, Mr. Examiner.

I would like to get this on the record, there should not be a stopping when I am starting to question the witness about something which I consider very vital.

Mr. Sklar: Mr. Examiner, may I answer counsel on that remark?

[952] As I recall distinctly, Mr. Graham went into that phase of it on cross examination very thoroughly. That is my recollection of the testimony, Mr. Examiner.

Mr. Mann: That is not so.

Trial Examiner Korey: In order to avoid wasting more time, I am going to permit you, Mr. Mann, to ask the first few questions to see how far you go on it.

Mr. Mann: All right.

Q. (By Mr. Mann) Is it a fact, Mr. Picariello, that you and Mr. Landriscina supervised the signing of these application blanks, Board's exhibit No. 8? A. That is right.

Q. And you two are the only ones who had charge of that, is that correct?

Trial Examiner Korey: That was gone into when both of them were on the stand, to cross examine him on.

Mr. Mann: I know, but I am leading up to something.

The Witness: Us two?

Q. (By Mr. Mann): That is true? A. No, I did not say that is true, I said, us two.

Q. Look at this one, a card by Mary Purgatorio, can you tell us whether you or Landriscina supervised the signing of that?

Mr. Graham: I object, Mr. Examiner, that has nothing to do with the scope of the direct examination.

[953] Mr. Mann: Well, now, it may have nothing to do with the scope of the direct examination, I want

this on the record, but if I have something in mind and I am going to tell you what I want to prove by this, I want to prove that Mary Purgatorio never signed that application blank.

Mr. Sklar: Why don't you bring her to court and ask her that question?

Mr. Mann: Don't ask me that. Let me say what I want to prove.

Trial Examiner Korey: Do not argue with each other.

The Witness: Maybe one of the girls made this out. One of the girls that works there.

Q. (By Mr. Mann) I did not ask you maybe anything. Did you supervise the signature on that card or did Landriscina do it?

Mr. Sklar: Mr. Examiner—excuse me.

Mr. Mann: If you know.

The Witness: Landriscina, I think.

Mr. Sklar: May I interpose? I do not know whether we understand many of the words used by Mr. Mann on this supervision phase. Those are poor terms to be used here.

Mr. Mann: If he does not understand, he is smart enough to tell me that he does not understand.

The Witness: Supervision does not mean making these out.

[954] Q. (By Mr. Mann) Did you see her sign this? A. I did not see her.

Q. Do you remember particularly the ones you saw signed?

A. The ones that I am sure that I saw signed are the ones that I made out. 2261

Trial Examiner Korey: Mr. Mann, at this time, I am going to restrict you from going into each and every one of those.

Mr. Mann: I am not going into each and every one. I am going into a few.

Trial Examiner Korey: There was ample opportunity, when he was on the stand, Mr. Landriscina was on the stand, to do that. You went into those questions thoroughly. To open it up again at this time, after both sides rested, and I permitted you to 2261 ask a number of questions and you said for the purpose of clearing up something—now we are going to go into these applications again.

It will be pro and con, and we will go on indefinitely.

Mr. Mann: I will make the statement, on the record, if you stop me, to this effect, I want to show here by this witness that there are five or six that I definitely know, of these applications, that are forgeries and were not signed by the applicants.

If you do not want to have that, I am satisfied.

Mr. Sklar: I move to strike that statement from the [955] record as being impertinent and if Mr. 2261 Mann wants to testify, he may take the stand, if he knows of his own knowledge, that these are forgeries.

Trial Examiner Korey: He has made a statement. He has told you of what he offers to prove.

Mr. Sklar: Why should that statement remain in the record.

Trial Examiner Korey: This witness, who was

called on the stand and asked a few questions, which absolutely do not pertain to the line of questions that Mr. Mann is now asking, and which are not pertinent to the cross examination—

Mr. Mann: I will say again—

Trial Examiner Korey: I just want to say that I will sustain the objection that was made to go further into this line of questioning.

Mr. Mann: I say, again, in connection with that, bearing mind that you have sustained the objection, that I am prepared to prove that there were certain signatures on some of these applications which bear names that were never put on there by the applicants for the reason that those applicants cannot write English.

Mr. Sklar: Is there an "X" mark on the applications?

Mr. Mann: There is an "X" mark on every application.

(There was discussion off the record.)

Trial Examiner Korey: How many do you claim are not [956] the signatures of these employees?

Mr. Mann: Now, you see, you do not let me go into the proof and then you ask me to make a statement.

Trial Examiner Korey: We have to have a limit here somewhere. You are too experienced an attorney not to realize—and I am not trying to be just complimentary, I know you are,—not to realize that we must have a stopping place somewhere.

When both sides rest, and a question is permitted, I must certainly limit both sides to the clearing up of certain phases, but not going into new phases.

There was plenty of opportunity and ample time to cross examine on those when the men were here on that question. 226

If you had any testimony or witnesses who would contradict that, you certainly had sufficient time to have them here. We have been here over a week now, and to go into it again at this time will mean opening up these cases and go on indefinitely with them.

Mr. Mann: I am satisfied to rest on your statement, if that is your ruling.

Mr. Graham: Mr. Examiner, Counsel having made an offer of proof, which I understand is not a thing which requires the introduction of testimony or anything of that sort, I would like to make a similar reference, a similar offer of proof as to this particular narrow issue, both of which [957] offers will then be on the record, neither of which will call for further testimony at this time. 227

I would like to offer to prove that in each of these five cases, to which counsel referred, that the individual applicant was present and that he was unable to sign, a fact which has not yet been verified, requested the officer of the union who did sign for him, if such be the case, to sign for him and that said applicant supplied all the information which was still—all information filled in upon the application blank. 227

Mr. Mann: Are you making that as an offer of proof? Maybe if you make it, it may be entertained, I do not know.

Mr. Graham: I simply wish that on the record.

Trial Examiner Kerey: Thank you, I would rather that we not go into those phases again. It will open

up the case to that phase, and probably mean calling in the witnesses.

Mr. Mann: You know, Mr. Examiner, and I want the record to show this, I have always said in the trial of these cases before the Labor Board—and that is one of the things that I am going to speak to Washington about—that you cannot enter 140 cards without proving signatures.

They do it that way. It is permitted in evidence.

You are not the first Examiner that has done it. They all do. I do not know whether you have a ruling on that [958] in Washington or not.

Trial Examiner Korey: I asked you, and I think you told us, that you had five or six names there saying that they are not the signatures of those people.

They all have "X" marks alongside the names of all of them.

Mr. Mann: I will tell you what I have on that; I want to compare those things with that other exhibit which is in evidence.

That is my point here. I know that these people could not sign.

Trial Examiner Korey: Make the statement, and I will be glad to consider it at the time I review the case and make my intermediate report.

Mr. Sklar: We make no objection to those signatures being forgeries. Mr. Mann had ample time in his defense of this case in which to place in evidence—

Mr. Mann: I am not saying "forgery", I am only—excuse me.

Trial Examiner Korey: Gentlemen, it is not a question of trying to keep any proof or evidence out. I

feel that whatever is going to be presented at this time will just be a re-hashing of the issues here and of the testimony that we have had.

Now Mr. Mann is going to make a statement, or has made [959] a statement as to five or six that are questioned, and if he wants me to consider those five or six, the signatures of those which he exhibited—that is, compare Board's Exhibit No. 8 with Respondent's exhibit No. 10, I cannot question—of course, I was going to consider all of the record as well as the exhibits, anyhow, but I will be more than glad to pay a little more attention if he desires me to go over those signatures.

Mr. Mann: Both exhibits are in evidence and I assume you are going to read them all.

Trial Examiner Korey: I certainly am, and I go into these things thoroughly.

Mr. Mann: I will call your attention particularly to the fact, Mr. Examiner, that on our exhibit, respondent's exhibit No. 10, when a person cannot sign their name and makes an "X" mark, that "X" mark is witnessed by a man, by an individual.

That is not so on these pink application blanks which are Board's exhibit No. 8. That is what I call your attention to.

Trial Examiner Korey: All right.

Mr. Mann: I do not say it is of vital importance. I do not say that it is going to be decisive of the case, one way or the other. It is a circumstance in the case and when I urge repeatedly, as I do on these hearings, that these [960] signatures be proven, the answer is no.

That is what you have when they are not proved.
278 You have 130-odd pink slips here and no human being is going to examine every one of those because if you did it would not mean anything to you.

What do you know about what was done there on July 14th?

But, if they were required to prove these signatures as you do in a court of law, then there would be something different. Then if they put Mr. Purgatorio on, and I saw his signature there, I would have an opportunity to question him.

That is the way to do it. This way, I have to ques-
279 tion Brother Picariello. He says he does not know anything about it. Landriscina may be the man. We could stay here a week and go over every one of them.

Trial Examiner Korey: That is why I am trying to avoid it. I am sure you do not want to be here another week at this.

Mr. Mann: You have my thought on the subject, and as long as I convey the thought to you, that is all.

Trial Examiner Korey: Are there some other questions of this witness?

Mr. Mann: That is all I have.

Mr. Graham: No questions.

280 (Witness excused.)

[961] (A short recess was taken, after which the proceedings were resumed, as follows:)

Mr. Sklar: At this time I wish to note on the record my objection to the offer of respondent's exhibit No. 12, which was offered at the beginning of this morning's session while I was not in the room.

(There was discussion off the record.)

Testimony of Frank J. Garone—Direct.

FRANK J. GARONE a witness called in rebuttal by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Graham) Will you please give your address, Mr. Garone? A. 187 Yorke Street, Brooklyn, New York.

Q. By whom are you employed? A. National Licorice Company.

Q. You are employed by the National Licorice Company, is that right? A. That is correct.

Q. Approximately how long have you been employed by the company? A. Eight years.

Q. Now, after the strike—did you return for employment after the strike, on the 20th of September? [962] A. Did I return?

Q. Yes, did you enter the plant on the 20th of September for employment? A. I went back to work on the 2nd.

Q. And then left again?

Mr. Mann: The 2nd of what?

The Witness: 2nd of September, and left again on the 3rd of September, the next day.

Q. (By Mr. Graham) when did you return for employment after that? A. I returned with everybody.

Q. You went in with a group of fourteen? A. That is right.

Q. Was that on the 20th of September? A. I guess it was.

Mr. Mann: No, it was not as late as that.

Mr. Healey: It was approximately that.

284

(There was discussion off the record.)

Q. (By Mr. Graham) When you returned on the 20th of September with the group of fourteen, where did you go? A. To the president's office, Mr. Sanford's office.

Q. And were there all of the fourteen with you when you went in? A. Yes, sir.

Q. And they all went with you to the president's office? [963] A. Yes, sir.

Q. Now, when you were in the president's office, were there individuals there who had not come in with you, who were said to be a committee?

285

Mr. Mann: Now, wait a minute.

Trial Examiner Korey: Who was there besides the others?

Mr. Mann: Do not let him lead him. Let him tell it.

The Witness: There was a committee there.

Trial Examiner Korey: Besides the fourteen that came in with you?

The Witness: Yes.

286

Trial Examiner Korey: There were about twenty-two of you production employees there?

The Witness: That is right.

whom you had mentioned, of the committee, were there any of the group returned with you who could be placed on the

Q. (By Mr. Graham) Now, did you ask these members committee? A. I did.

Q. And what were you told? A. They would have to see Mr. Sanford. 2281

Q. That you had to see Mr. Sanford? A. That—

Trial Examiner Korey: No, his testimony was not that.

The Witness: They would see Mr. Sanford.

Q. (By Mr. Graham) They would see Mr. Sanford? [964] A. Yes, they would.

Q. Now, later on, did you approach members of this Committee in regard to— 2281

Mr. Mann: Now, wait a minute. He is leading him right along. Let him tell what he did. Let him tell it chronologically. He is a witness. I have not talked to him. They have talked to him outside, I do not know where they talked to him. I am at least entitled to that, that he does not lead him.

Trial Examiner Korey: Do not lead him, if you can help it, Mr. Graham.

Q. (By Mr. Sklar) Now, at that time when you testified now, when he said he would have to see Mr. Sanford, was Mr. Sanford in the room? A. No, sir. 2281

Q. Did Mr. Sanford come back into the room shortly thereafter? A. Yes, sir, after we got through.

Q. Did you have a conversation with Mr. Sanford? A. Yes, sir.

Q. What did you say to him and what did he say to you? A. One of the committee—

Mr. Mann: What did you say to him, and what did he say to you, is the question.

The Witness: What did I say to Mr. Sanford?

290 [965] Q. (By Mr. Sklar) What did you ask Mr. Sanford, if anything, and what did he say to you? A. I told him after the committee spoke up, to put one of us on the shop union, or committee, whatever it is. I tried to explain it more better to Mr. Sanford by saying this, I said, "Mr. Sanford, the simple reason is this why we want one of us to be on that committee, we are afraid we might be left out in the cold. We don't know what is going on in the shop."

All he said was, "I am sorry, the committee has been picked already. There is enough right now on the committee."

291 Q. Was that the end of your conversation at that time with Mr. Sanford? A. That was the end. That is the words.

Q. Since September 20, 1937, did you have occasion to speak to any members of the committee with respect to any grievance you may have had? A. Yes, I did.

Q. Now, when did you speak to any member and who was the member you spoke to? A. The name?

Q. Well, if you want to give the name, or if you care to give it, we would like to have it. If you do not want to give it, do not give it. [966] A. Yes; Bill McCann.

Q. What did you say to Bill McCann and what did he say to you? A. I asked him if he could get me more money.

292 Q. You mean, you wanted a raise? A. Sure, I wanted a raise, I wanted more money.

Q. Why was that?

Mr. Mann: I object to that. He wanted a raise, isn't that sufficient?

Trial Examiner Korey: Yes.

Q. (By Mr. Sklar) You spoke to him again and what did

he say? A. He said he would have to see somebody else. I guess somebody else on the committee. 229

Q. What did he do? A. He spoke to them.

Q. What happened? A. He said he cannot argue for me because I told him to cut my hours. He said, "Well, they cut your hours, we cannot argue for you."

Q. In other words, they had reduced your hours to a lesser number and paid you the same wage per hour as you had been paid before? A. Yes.

Q. That caused you to earn less money? [967] A. Yes.

Q. Now, did the committee go for you to see any members of the management to straighten that out? A. No, sir. 229 When this committee was talking to me I figured it was best for myself to go down there.

Q. And who did you see? A. I saw Mr. Sanford.

Q. You had a conversation with Mr. Sanford? A. Yes, sir

Q. Then what was that conversation? A. About more money.

Q. What did he say? A. He promised me at the end of the year, or beginning of the year, either one.

Q. Did any of the committee remark about your going down to Mr. Sanford alone? A. Not that I heard of.

Mr. Sklar: That is all. 229

Cross Examination:

Q. (By Mr. Mann) Look, Mr. Garone. A. Yes.

Q. You signed a contract, did you not? A. Signed a contract?

Q. Yes. A. Yes, sir, I did.

[968] Q. Nobody forced you to sign that contract? A. Nobody forced me.

Q. You signed it voluntarily, of your own free will? A. 2296 The rest of them signed it, I guess it was, you know what I mean, I guess you had to sign it, something, everybody else signed it, and I supposed I had to sign, myself.

Q. Nobody forced you to do it? A. Nobody forced me.

Q. All right. Before you signed that contract, and before the strike, you were working more hours, is that not true? A. That is right.

Q. How many hours were you working before the strike? A. 51½ hours.

Q. Just tell this gentlemen, the Examiner, what is the nature of your work over there? A. Well, oiler and coal 2297 passer, fireman, sort of a handy man.

Q. You are really a fireman, is that not right? A. Yes.

Q. A maintenance man, is that what you are called? A. Yes, that is right.

Q. All right. So, before the strike you were working 51½ hours and you were getting, how much money? A. $23.70.

Q. A week? [969] A. That is right.

Q. And now, you are working less than 51½ hours, is that right? A. Yes.

Q. How many hours are you working now? A. 44.

Q. And you are also earning less money than you did when you worked 51½ hours? A. That is right.

2298

Trial Examiner Korey: What are you getting now?

A. $20.24 and with the 5 per cent raise that comes up to $21 24.

Q. (By Mr. Mann) Now, is that really your grievance?

Mr. Sklar: I object to any testimony as to what the grievance was or as to the merits of the grievance.

Trial Examiner Korey: No.

Mr. Mann: I want to know.

The Witness: Make it a little clearer, please.

Q. (By Mr. Mann) Would you like to work 51 hours again and make a little more money?

Mr. Sklar: That is objected to.

Trial Examiner Korey: I will sustain the objection.

Q. (By Mr. Mann) You went down to see Mr. Sanford, yourself, you say? A. Yes, sir.

[970] Q. Give me approximately the date, if you do not remember it exactly. A. A couple of weeks ago.

Q. He talked to you, did he not? A. Yes, he talked to me.

Q. What did you say to him? A. I said to him, "Mr. Sanford, I think I am entitled to more money." He told me, "You signed the contract for 5 per cent." I said, "Yes, I know I told you, but I thought you were going to give me the benefit of the extra hours after you cut my hours."

Q. When you said you thought you were entitled to more money, did you mean you were entitled to get how much? A. My old pay.

Q. For less hours? A. Yes.

Q. I see. In other words, you, in effect, said to Mr. Sanford that for working 44 hours, you would like to get the same pay that you got for working 51½ hours? A. That is right.

Q. And at first you say your spoke to Bill McCann about that trouble? A. Before I went down, yes.

Q. Before you went down? A. Yes.

[971] Q. Would McCann be the man on the committee that you would have to speak to? A. Well, I guess.

Q. Or don't you know? A. He was such a friend of mine,
2302 I guess I would go to him first. He said he would try to get the committee together. And he did speak to them. I told you that before—

Q. He did speak to the committee? A. I do not know whether he spoke to the whole committee or not. He spoke to one person on that committee.

Q. Which one? A. He is here now, if you want to ask him.

Q. What is his name? A. Louie.

Trial Examiner Korey: Louie what?

The Witness: I do not know what is his last name.

2303 Mr. Mann: Is it Louie Mascola?

The Witness: Yes.

Q. (By Mr. Mann) Mr. Sanford said something to you about getting some more money at the end of the year? A. The end of the year, or the first of the year.

Q. You said in answer to this gentleman (referring to Mr. Graham) that you went back to work on September 2nd and then you left on September 3rd. A. That's right.

[972] Q. Why did you only work one day? A. I could not work.

Q. You mean, you were not feeling well? A. No, I could
2304 not work. I seen the people walking up and down outside. I finally walked out again.

Q. You mean, there were still some pickets in front of the place? A. Yes.

Q. And when you saw that, you made up your mind you would not work while the pickets were there? A. I thought I should not have went back, so I went out again.

Q. And you did not come back until September 20th? A. Until everybody went back.

Q. Now, most of the people were working in there by September 2 or 3, were they not? A. That is true. 230

Q. There were only about fourteen that had not come back, is that right? A. More than that.

Q. How many more would you say? A. About nineteen.

Q. About nineteen? A. Yes, sir.

Q. And it was your idea, when you left on September 3, that [973] you would not come back until the rest of those nineteen came back? A. Until the rest came back.

Q. How old are you, Garone? A. Twenty-six.

Q. Married? A. Yes, sir.

Q. You were out on strike, then, from August 2 to the day you finally came back, which was September 20, is that right? 230
A. Yes.

Q. Did you get paid for that one day that you worked, September 2nd? A. I got two days' pay.

Q. You got two days' pay? A. Yes.

Q. Do you remember this paper; this is a photostatic copy of it, did you ever see this before? (Referring to respondent's exhibit No. 10.) Look at this, Mr. Garone; did you ever see this before? Did you ever see it, is the question? A. What do you mean?

Q. Did you see it? A. Never seen this.

Q. Your name is not on there, is it? [974] A. I do not think so, because I did not see it. It should not be, anyway. 230

Q. When you came back to work on September 20th, you heard that there had been a bargaining committee elected, did you hear that? A. I did not hear it: I seen it when I went in. I want to know who they were and they told me.

Trial Examiner Korey: Who told you what?

The Witness: Mr. Sanford told me.

Trial Examiner Korey: That was on the 20th of
308 September?

The Witness: That is when we all walked in. The day we all walked in.

Trial Examiner Korey: This committee was there already?

The Witness: They were in Sanford's office all lined up.

Q. (By Mr. Mann) when was it, then, that you said that you would like to be, one of you people would like to be on the committee, one of these fourteen or nineteen, is that the
309 time you made that request? A. That was not the exact time, not to the minute. But, after he gave us a chance to read that contract, he left the room to let us alone.

Q. When you say "he", you mean Mr. Sanford? A. Yes, he left us alone to read our contracts. That is [975] the time we asked the committee, and that is the time I asked Sanford, when he came back.

Q. Whether you could be on the committee? A. Not me.

Q. One of you? A. Just one of the last ones.

Q. Did you have a particular person in mind that you wanted to be on this committee or group? A. No.

Q. Nobody in particular? A. No, I gave my reasons why.

310 Q. Mr. Sanford said to you he was sorry? A. He said that the committee was enough.

Q. That the committee was elected, did he not say that? A. Yes.

Mr. Sklar: I move to strike out the question as stated by counsel, especially the words, "the committee has been elected." And got enough. He is trying to put words into the witness' mouth.

Mr. Mann: I asked him what he said.

Mr. Sklar: Ask him what he said.

Trial Examiner Korey: Strike it out and put the question in the proper form.

Q. (By Mr. Mann) What did he say? A. I told him to put one of the girls on the committee so [976] we would not be left out in the cold. I made a suggestion, why not put one of theese girls on the committee? He said, "The committee has been picked out" and that there was enough right now on the committee.

Mr. Mann: I think that is all.

Mr. Sklar: No further questions.

(Witness excused.)

Trial Examiner Korey: Does the Board rest?

Mr. Sklar: The union rests.

Mr. Mann: All right; we all rest.

Trial Examiner Korey: Very well; the hearing is now concluded.

(Whereupon, at 11:40 o'clock a. m., Wednesday, October 20, 1937, the hearing in the above entitled matter was closed.)

Amended Charge.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. 11—C—740.

In the Matter of

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

—and—

NATIONAL LICORICE COMPANY

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that National Licorice Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and 2 and 5 of said Act, in that the said National Licorice Company has by means of threat and intimidation, coerced and attempted to coerce its employees into signing individual contracts with the said company; in that the said company has called meetings of its employees and has compelled said employees to attend said meetings, and has attempted to compel said employees to form committees, not of their own choosing, to bargain collectively with the said company; in that the said company has by threat and intimidation of its employees, interfered with the formation and administration of the Labor Organization of the undersigned; in that the said company refuses to bargain collectively with representatives of the employees.

Amended Charge.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 405, GREATER NEW YORK AND VICINITY.
245 West 14th Street, New York City.

By (Sgd.) JAMES ANDERSON,
VICE PRESIDENT.

Sworn and subscribed before me
this 2 day of August, 1937.

LILLIAN FISHER
Commissioner of Deeds
N. Y. Reg. No. 30F8, N. Y. Co. Clk's No. 80
Commission Expires April 14, 1938.

Complaint.

THE UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

It having been charged by the Bakery & Confectionery Workers' International Union of America, Local Union 405, Greater New York and Vicinity, that the National Licorice Company, 106 John Street, Brooklyn, New York, hereinafter called the respndent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board by the Regional Director for the Second Region as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, hereby issues its complaint and alleges as follows:

Complaint.

1. Respondent, is and has been since June 27, 1902, a corporation duly organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the City of New York, County of Kings and State of New York and places of business in New York, Illinois, Pennsylvania and Canada, and is now and has been continuously engaged at a place of business in the City of New York, County of Kings, and State of New York, hereinafter called the Brooklyn Plant, in the manufacture, sale and distribution of licorice and related products.

2. Respondent, in the course and conduct of its business as aforesaid, causes and has continuously caused a substantial amount of materials and products used in the manufacture, sale and distribution of licorice and related products to be purchased, delivered and transported in interstate and foreign commerce from and through the states of the United States other than the State of New York and from and through countries other than the United States of America to its Brooklyn Plant and causes and has continuously caused a substantial part of the products manufactured, sold and distributed by them as a part of its business as aforesaid, to be supplied, delivered and transported in foreign and interstate commerce from its said Brooklyn Plant in the State of New York.

3. In order that the employees of the respondent may have the full benefits of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of the National Labor Relations Act, all employees of the respondent engaged in receiving, manufacturing, packing and distribution of the products handled in the said Brooklyn Plant as described above, exclusive of clerical and super-

visory employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section
2326 9, subdivision (b) of said Act.

4. On or about July 28, 1937, a majority of the employees of respondent in said unit designated a labor organization known as the Bakery & Confectionery Workers' International Union of America, Local Union 405, as their representative for the purpose of collective bargaining with the respondent, such designation having been made by signing applications for membership in said union. At all times since that date the union has been the representative for collective bargaining of a majority of the employees in said unit and has by
2327 virtue of Section 9, subdivision (2) of said Act, been the exclusive representative of all the employees of the respondent in said unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

5. On or about July 29, 1937, while the respondent was engaged at its said Brooklyn Plant, as above described, the union by its duly authorized agent requested the respondent through its officers and agents to bargain collectively in respect to rates of pay, hours of employment and other conditions of employment with the union as the exclusive
2328 representative of all the employees of the respondent in said unit. On or about said date and at all times thereafter, the respondent did refuse and has refused to bargain collectively with the union in that it did refuse and has refused to bargain with the union through its duly authorized agent as the exclusive representative of all the employees in the said unit.

6. Respondent, by its officers and agents on or about July 16, 1937, while engaged at its said Brooklyn Plant as described above, did form and sponsor a labor organization or 2329
plan for the purpose of dealing with its employees concerning grievances, labor disputes and conditions of employment in that its supervisory employees did initiate said organization; in that it did direct its employees in said Brooklyn Plant to attend the meetings of said organization; in that it did permit recruiting of membership on company property and company time; and in that it did make membership in said organization a condition of employment. Said respondents have dominated and contributed to the support of and interfered with the administration of said labor organization or plan, down to and including the date of issuance 2330
of this complaint, in that its said supervisory employees have participated in and controlled the meetings of said organization; in that it did permit said meetings to be held on company property and company time.

7. Respondent, by its officers and agents, while engaged at its said Brooklyn Plant as described above, from on or about July 15, 1937, down to and including the date of the issuance of this complaint, has urged, persuaded and warned its employees at said Brooklyn Plant to refrain from becoming or remaining members of the union; has made signing of individual contracts a condition of employment; has 2331
threatened to close down its said Brooklyn Plant and to move to another city if its said employees joined or assisted said union; has made raises in pay conditional upon nonmembership in the union; has threatened said employees with discharge and other reprisals if they became or remained members thereof and did not become members of the organization referred to in paragraph 6, and has kept

under surveillance the meetings and meeting places of said union members employed at said Brooklyn Plant of the respondent as aforesaid. 2332

8. On August 2, 1937, respondent's employees in said Brooklyn Plant went on strike because of respondent's acts described above in paragraphs 5 to 7 inclusive. Said strike has continued down to and including the date of issuance of this complaint.

9. By its initiating, dominating and contributing to the support of and by its interfering with the administration of the organization referred to in paragraph 6, and by all of said acts, and each of them, respondent did engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (2) of said Act. 2333

10. Respondent, by its refusal to recognize the union and to bargain collectively with the union as the duly authorized representative of the majority of its employees in the unit set forth above in paragraph 3 hereof, and by all of said acts, and each of them, did engage in and are thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (5) of said Act.

11. By its urging, persuading and warning its employees to refrain from becoming members of said union, and by its threatening the said employees with discharge and other reprisals if they became or remained members of said Union, and if they did not become members of the labor organization described above in paragraph 6, and by its keeping under surveillance the meetings and meeting places of the said union and of members thereof, and by its other acts, as described above in paragraph 7, and by its initiating, forming 2334

and sponsoring of a labor organization or plan, as described above in paragraph 6, and by its refusing to bargain collectively with said union as described above in paragraphs 3, 4 and 5, and by other acts, the respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

12. The activities of respondent, as above set forth in paragraphs 3 to 7 inclusive, occurring in connection with the operations of the respondent described in paragraphs 1 to 2 inclusive, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

13. The aforesaid acts of the respondent as hereinabove set forth constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) (2) and (5) and Section 2, subdivisions (6) and (7) of said Act.

WHEREFORE the National Labor Relations on the 7th day of October, 1937, issues its complaint against the National Licorice Company, respondent herein.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 13th day of October, 1937, at 9:30 o'clock in the forenoon, in Room 431 of the Old Post Office Building, City Hall, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it

in accordance with its Rules and Regulations, Series 1, as amended, Article IV, and Article II, Section 23, on the alle-
338 gations set forth in the complaint, attached hereto, at which time and place you will have the right to appear in person or otherwise and give testimony.

You are further notified that you have the right to file with the Regional Director for the Second Region, acting in this matter as agent of the National Labor Relations Board, an answer to the complaint attached hereto within five (5) days from the date of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, as amended, made and published by the National Labor Regulations Board pursuant to au-
339 thority granted by the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations. Also attached hereto is copy of the charges referred to in the first paragraph of the complaint hereof.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its complaint and notice of hearing, to be signed by the Regional Director for the Second Region on the 7th day of October, 1937.

Elinore M. Herrick
Regional Director, Second Region
340 National Labor Relations Board
233 Broadway, New York, New York

(SEAL)

AMENDED CHARGE.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

234;11

SECOND REGION

Case No. II—C—740.

NATIONAL LICORICE COMPANY

—and—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

234;11

Case No. II—C—740.

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that National Licorice Company, 106 John Street, Brooklyn, New York, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (5) of said Act, in that:

234;11

The said National Licorice Company has by means of threat and intimidation, coerced and attempted to coerce its employees into signing individual contracts with the said company; in that the said company has called meetings of its employees and has compelled said employees to attend said meetings, and has attempted to compel said employees to form committees, not of their own choosing, to bargain collec-

tively with the said company; in that the said company has by threat and intimidation of its employees, interfered with
2344 the formation and administration of the Labor Organization of the undersigned; in that the said company refuses to bargain collectively with representatives of the employees.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organiza-
2345 tion.)

Bakery & Confectionery Workers International Union of America, Local 405, Greater New York and Vicinity 245 West 14th Street, New York City.

By: James Anderson, Vice-President.

Subscribed and sworn to before me
this 2nd day of August, 1937.

LILLIAN FISHER, Com. of Deeds,
2346 N. Y. Reg. #30F3,
N. Y. Co. Clks. #80, Comm. Exp. 4/14/38.

Affidavit and Notice of Motion for Bill of Particulars.

THE UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

In the Matter of

NATIONAL LICORICE COMPANY

—and—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

SIRS:

PLEASE TAKE NOTICE that upon the complaint in this proceeding and upon the Amended Charge annexed to said Complaint and upon the rules and regulations of the National Labor Relations Board and upon the annexed affidavit of Abraham Mann, Esq., duly verified October 11th, 1937, the undersigned will move before the Trial Examiner designated to conduct the hearing in the above proceeding, at the hearing to be held before such Trial Examiner on the 13th day of October, 1937 at 9:30 o'clock in the forenoon, at the hearing in Room 431 in the old Post Office Building, City Hall, New York City, or as soon thereafter as counsel can be heard, for an order directing the National Labor Relations Board, by its Regional Director for the Second Region, to serve and file on the respondent or its attorneys, a verified bill of par-

ticulars of the Amended Charge and of the Complaint, setting forth in detail the following:

AS TO THE AMENDED CHARGE:

1. The name of any person or persons in the National Licorice Company who, it is claimed, threatened and/or intimidated and/or coerced or attempted to coerce its employees in the signing of individual contracts with the said company.

2. The name or names of such employees who, it is claimed, were threatened, intimidated or coerced into the signing of individual contracts.

3. The names of the employees who, it is claimed, were compelled to attend the meeting or meetings as alleged in the Amended Charge.

4. The name or names of the employees who, it is claimed, were compelled to form committees not of their own choosing for the purposes of bargaining collectively with the company.

5. The name or names of the officers or executives of the National Licorice Company who, it is claimed, threatened or intimidated employees for the purpose of interfering with the formation and administration of the labor organization mentioned in said Amended Charge.

6. The name or names of the employees who, it is claimed, were interfered with in the respects mentioned in Paragraph 5 hereof.

7. State each and every act which the National Labor Relations Board claims constituted coercion, intimidation and threats practiced upon employees, as alleged in the Amended Charge. 235

AS TO THE COMPLAINT

8. State the names of the employees whom the National Labor Relations Board claims constituted a majority of employees who designated the Bakery and Confectionery Workers' International Union of America, Local Union 405, as their representative for collective bargaining, as alleged in Paragraph 4 of the Complaint. 235

9. State the name of the duly authorized agent of said union who requested respondent to bargain collectively as alleged in Paragraph 5 of said Complaint, and to whom on behalf of the respondent said request was made.

10. State the names of the officers and agents who, it is alleged, on behalf of said respondent formed and sponsored the labor organization, as alleged in Paragraph 6 of the Complaint; and the method and manner in which said respondent formed and sponsored said labor organization; and the nature and manner in which respondent's supervisory employees have participated in and controlled the meetings of the organization referred to in said Paragraph of the complaint. 235

11. Who on behalf of respondent has urged, persuaded and warned its employees to refrain from becoming or remaining members of the union, and who

on behalf of said respondent made the threats and the statements and did the acts, as alleged in paragraph 7 of said Complaint; and the names of the employees who have been urged, persuaded or warned, or who have been threatened, coerced and intimidated, as alleged in said Paragraph 7; the nature of the reprisals referred to in said paragraph, and who on behalf of said respondent kept under surveillance the meetings of the said union.

Dated: New York, October 11th, 1937.

Yours, etc.,

KOTZEN, MANN & SEGEL,
Attorneys for Respondent,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
New York City.

TO:

NATIONAL LABOR RELATIONS BOARD
Regional Director, Second Region
Office & P. O. Address,
233 Broadway,
Borough of Manhattan,
New York City.

BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY,
Office & P. O. Address,
245 West 14th Street,
Borough of Manhattan,
New York City.

Affidavit of Abraham Mann.

THE UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

ABRAHAM MANN, being duly sworn, deposes and says that he is a member of the firm of Kotzen, Mann & Siegel who are the attorneys for the above named respondent.

The Complaint and the Amended Charge in the above matter were served on deponent's client on October 8th, 1937.

An examination of the complaint and the Amended Charge reveals that said Amended Charge and the allegations of the complaint are set forth in general language without giving specific dates and without giving a clear and concise statement of the facts constituting the alleged unfair labor prac-

tices affecting commerce. Furthermore, no names of the individuals involved are set forth, nor is the time and place
362 of the occurrences given, as specifically provided for by Section 4, Subdivision (c) of the rules and regulations of the National Labor Relations Board.

By reason of the foregoing it is impossible for deponent to properly prepare the defense of his client in this proceeding unless the particulars requested in the notice of motion annexed hereto is ordered.

Deponent therefore respectfully requests that the Trial Examiner make an order directing the National Labor Relations Board to furnish the particulars set forth in the annexed notice of motion.

363

.....

Sworn to before me this
11th day of October, 1937.

MAE COHEN
Notary Public
N. Y. Co. Clk's No. 164, Reg. No. 8C85
Kings Co. Clk's No. 74, Reg. No. 80[illegible]
Commission Expires March 30, 1938

364

Night Letter dated October 11, 1937

WESTERN UNION

Night Letter

OCTOBER 11, 1937 2361

KOTZEN MANN & SIEGEL, 51 CHAMBERS STREET, NEW YORK CITY NATIONAL LICORICE COMPANY, 106 JOHN STREET, BROOKLYN, NEWYORK BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA

245 WEST 14 STREET, NEW YORK CITY

PLEASE TAKE NOTICE THAT HEARING IN NATIONAL LICORICE COMPANY CASE TWO C SEVEN FORTY WILL COMMENCED AT TWO OCLOCK IN THE AFTERNOON AT THE SAME PLACE AND ON THE SAME DATE AS CONTAINED IN NOTICE OF HEARING ISSUED OCTOBER SEVENTH NINETEEN THIRTYSEVEN 2361

ELINORE M HERRICK REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD

2361

Answer of National Licorice Company.

THE UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. II-C-740

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

The respondent, National Licorice Company, answering the complaint issued by the National Labor Relations Board, and signed by the Regional Director for the Second Region, dated the 7th day of October, 1937:

First: Denies each and every allegation contained in paragraphs of said complaint marked "2", "4", "6", "7", "9", "10", "11", "12" and "13".

Second: Denies each and every allegation contained in paragraph of said complaint marked "5", except that the union mentioned requested that the respondent bargain collectively with it.

Third: Denies each and every allegation contained in paragraph of said complaint marked "8", except that respondent admits that certain workers suspended operations and ceased work on August 2, 1937. 2371

Fourth: Denies each and every allegation contained in the document entitled "Amended Charge," annexed to and forming part of said complaint.

AS A FIRST, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT, THE RESPONDENT ALLEGES:

Fifth: That the business of the respondent, National Licorice Company, consists of the manufacture of licorice products and confections for the drug, confectionery, grocery and allied trades within the County of Kings, City and State of New York, wherein its plant, machinery and appurtenant equipment are located; that the employees of the respondent, National Licorice Company, are employed in, and confine their activities in such manufacture to the plant and place of business of said respondent in the County of Kings, City of New York. 2378

Sixth: That the scope of the said activities and operations of the respondent are not interstate in character or effect, nor do such activities and operations constitute or affect interstate commerce within the meaning and intent of Article I, Section 8, of the Constitution of the United States, nor do these business activities or operations burden or obstruct commerce, or have such a close and substantial relation to interstate commerce that control of such activities and operations of the respondent is essential or appropriate to protect that commerce within the meaning and intent 2378

of the National Labor Relations Act, or any of the provisions thereof.

374

Seventh: That by reason of the foregoing, the National Labor Relations Board, its members, Regional Boards, agents, or agencies, have no power or authority, express or implied, to entertain any charge or charges, including the amended charge attached to and alleged in the complaint issued by the Board herein, bearing Case No. II-C-740, or to issue any complaint based upon such charges, or to conduct hearings thereon, take any testimony thereunder, make any rulings and findings, or issue any recommendations or orders against the respondent, based upon such charges, or the alleged un-
375 fair labor practices contained in such complaint, and that the National Labor Relations Board, its members, Regional Boards, agents or agencies have no jurisdiction over the person or property of the respondent, National Licorice Company, or its officers, directors, stockholders, agents or employees, or over the subject matter of the proceedings based upon the issuance of the complaint herein.

AS A SECOND SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT, THE RESPONDENT ALLEGES:

Eighth: That the Bakery and Confectionery Workers' 376 International Union of America, Local Union 405, mentioned in the complaint, and whose name is appended to the amended charge annexed thereto, has at no time ever submitted or supplied to the respondent proof of any nature indicating that it was the duly designated representative of the majority of the respondent's workers, to constitute such union as their collective bargaining agent.

AS A THIRD, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT, THE RESPONDENT ALLEGES: 2371

Ninth: Repeats and reiterates each and every allegation contained in paragraph "Eighth" of this answer, with the same force and effect as if herein set forth in full.

Tenth: That notwithstanding the failure and omission of the aforesaid union to submit and supply such proof, the respondent, nevertheless, did confer with the representatives of the said union on or about July 19th, 1937, and did, at the instance and request of the National Labor Relations Board, Second Region, bargain with the representative of said union on July 28th, July 29th and August 2nd, 1937. That on the 2378
latter date, by mutual consent, such bargaining negotiations were further adjourned to August 5th, 1937, with the understanding that the existing situation was to remain unchanged.

Eleventh: That contrary to, and in violation of, the express agreement and arrangement made as indicated, the union did not appear on August 5th, 1937, to continue such bargaining negotiations, but instead, in contravention of its agreement, without justification or warrant therefor in fact or in law, on August 2nd, 1937, at about twelve o'clock noon of that day, coerced and intimidated the respondent's workers 2379
to discontinue their operations, cease work and leave their employment, and further, at such time, instituted and instructed and directed said workers to inaugurate and engage in an illegal sit-down strike in respondent's plant, and unlawfully trespassed on respondent's property, necessitating the intervention of the Police authorities to preserve and protect respondent's rights and property.

Twelfth: That the aforesaid illegal and unwarranted activities of the said union further caused, compelled and re-
380 quired the suspension of operations and work in respondent's plant from the said August 2nd, 1937, to August 25th, 1937, upon which latter date the respondent's workers voluntarily commenced to return to the respondent's plant, which said return of workers continued to September 20th, 1937, by which latter date practically all of the respondent's workers had voluntarily returned to work in the respondent's plant.

Thirteenth: That during such period, the workers, voluntarily and without any solicitation on the part of the respondent, requested and urged the respondent that collective
381 bargaining be had with them in respect to hours, wages and conditions of employment affecting them, to which requests the respondent acceded.

Fourteenth: That thereupon, and on or about the times stated, the workers in respondent's plant voluntarily, in writing, disaffirmed their alleged membership in the union, repudiated the designation and claim of the union and anybody else as their collective bargaining agent, and voluntarily designated and chose a committee to represent them in collective bargaining with the respondent. That at such times, the alleged strike mentioned in the complaint had terminated,
382 and almost all of the workers had returned to work as indicated.

Fifteenth: That thereupon and thereafter, pursuant to the requests and written designations made by the respondent's workers, the respondent, in strict conformance and compliance with the provisions of the National Labor Relations Act, did confer and bargain with the committee duly

designated by the workers, as a result of which it has actually negotiated and agreed with its employees with reference to wages, hours and conditions of employment, which said 2388
terms of the agreement reached have been embodied in written contracts duly and properly signed and executed by the respondent, the collective bargaining committee, and the employees of the respondent, who have indicated their approval and consent to, and ratification of such contracts.

Sixteenth: That such contracts are in full force and effect, and all of the parties thereto are operating thereunder, pursuant to its terms and provisions, in strict accordance with the terms of the National Labor Relations Act.

2388

Seventeenth: That by reason of the foregoing, the union mentioned in the complaint is not the collective bargaining representative of respondent's employees, and such union has no right, power or authority to compel the respondent to bargain with it in respect to the matters mentioned in the complaint, the amended charge annexed thereto, or with reference to any other matters or things.

AS A FOURTH, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT, THE RESPONDENT ALLEGES:

2388

Eighteenth: That at all the times hereinafter mentioned, since its inception, up to and including the day hereof, the activities and operations of the respondent, National Licorice Company, have been conducted in strict accordance with all the laws of the federal, State and local government regulatory thereof, including the National Labor Relations Act.

Nineteenth: That at all the times since its inception to the day hereof, the National Licorice Company has conducted
386 its activities and operations so as to avoid any obstruction to the free flow of commerce, as established and defined by the National Labor Relations Act, and has been receptive to negotiations by its employees of the terms and conditions of their employment, for their aid and protection, and has actually bargained, negotiated and agreed with its employees to such terms and conditions with reference to hours, wages and conditions of employment, in strict accordance with the letter, purpose and intent of the National Labor Relations Act.

387 Twentieth: That the action of the National Labor Relations Board in issuing its complaint herein, and any further proceedings had thereunder, tends to and actually has the effect of interfering with and undermining the business of the respondent, National Licorice Company, fosters industrial unrest among the employees of the said respondent, interfering with their bargaining arrangements, actually endangering the security and continuance of their employment.

Twenty-first: That the action of the National Labor Relations Board in the respects mentioned has the effect of interrupting, interfering with and affecting the volume of
388 the business of this respondent, by impairing and disrupting the market for the respondent's products, thereby threatening diminution of employment in the plant of the respondent, contrary to and in violation of the express purpose and intent of the National Labor Relations Act.

FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT, THE RESPONDENT ALLEGES: 2389

Twenty-second: That the complaint issued herein is defective in that the original charge, which the so-called amended charge, annexed to the complaint, is claimed to amend, is not annexed and appended to the complaint served upon the respondent, as required by the National Labor Relations Act and the rules and regulations promulgated by the National Labor Relations Board pertaining thereto, particularly Article II, Sections 1, 2, 3, 4 and 5 of such rules and regulations.

2390

Twenty-third: That said paper designated as, and purporting to be, an amended charge, does not contain a clear and concise statement of the facts constituting the alleged unfair labor practices, and does not state the names of the individuals involved in the allegations of such charge, in violation and contravention of Article II, Section 4(c) of the rules and regulations promulgated by the National Labor Relations Board.

Twenty-fourth: That by reason of all of the foregoing, neither the National Labor Relations Board nor its Regional Director, nor its Trial Examiner, nor any other person purporting to act under the National Labor Relations Act, has any power or jurisdiction to issue complaints, conduct hearings, summon witnesses, take any evidence, make any orders, or act in any capacity whatever against the respondent. 2391

Twenty-fifth: That by reason of the foregoing, all proceedings against said respondent are irregular and void and

in violation of law and the constitutional rights of said respondent, National Licorice Company.

2392

WHEREFORE, the respondent, National Licorice Company, respectfully requests dismissal of the complaint herein and the alleged charges upon which said complaint is claimed to be predicated and based.

NATIONAL LICORICE COMPANY
By D. D. SANFORD,
President.
Office & P. O. Address,
106 John Street,
2393 Borough of Brooklyn,
City of New York.

Subscribed to and sworn to
before me this 13th day of
October, 1937.

(Sgd) MAE COHEN
MAE COHEN
Notary Public
N. Y. Co. Clk's No. 164, Reg. No. 8C85.
Kings Co. Clk's No. 74, Reg. No. 8083
2394 Commission Expires March 30, 1938

Answer to Demand for Bill of Particulars.

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD 2395

SECOND REGION

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

2396

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

PLEASE TAKE NOTICE that the answer to the notice of motion for a Bill of Particulars of the respondent in the above entitled cause is as follows:

I

In answer to Paragraph 9 of the respondent's notice, the 2397
name of the duly authorized agent of said union who requested the respondent to bargain collectively as alleged in Paragraph 5 of said complaint is William A. Galvin. Similar requests were also made by James Anderson and August Picciarelli. This request and demand was made to Daniel D. Sanford, president of the respondent company and also to other officers and agents of the respondent company.

II

2398 In answer to Paragraph 10 of the respondent's notice, the names of the officers and agents of the respondent company who formed and sponsored the labor organization as alleged in Paragraph 6 of the complaint are Daniel D. Sanford, Walter J. Healey, Charles A. Smylie, Tom Dorsey and other officers and agents of the company whose names are unknown to the Board. The organization referred to in Paragraph 6 of the complaint was initiated by or on behalf of the respondent company in that the suggestion for said organization was made to the employees of the respondent company by the aforesaid officers and agents of the respondent company.
2399 The individual employees who were to constitute the governing committee of the said organization were chosen and designated by the aforementioned officers and agents of the respondent company. The respondent's supervisory employees have participated in and controlled the activities of the said organization in that the committee chosen by the supervisory officials to be the governing committee of the said organization has taken only such action with respect to adjusting the wages, hours and other conditions of employment between the respondent employer and its employees as have been suggested by the aforesaid supervisory employees.

2400

III

In answer to Paragraph 11 of the respondent's notice, the officers and agents of the respondent named in the preceding paragraph (Number II) are the persons who on behalf of the respondent have urged, persuaded and warned its employees to refrain from becoming or remaining members of the union and who on behalf of said respondent have

made threats and statements and done the acts as alleged in Paragraph 7 of said complaint. The employees who have been thus urged, persuaded or warned or threatened, coerced or intimidated, as alleged in Paragraph 7 of said complaint, are all of the employees of the said respondent who were employed by the respondent at its Brooklyn plant from on or about July 15, 1937, down to the date of issuance of the complaint. The nature of the reprisals referred to in Paragraph 7 of the complaint consisted of discharge and discrimination in relation to the terms and conditions of employment of said employees by the respondent. 2401

Respectfully submitted,

2402

S/ Charles A. Graham
CHARLES A. GRAHAM
Attorney
National Labor Relations Board

October 13, 1937
(SEAL)

2403

Supplemental Answer to Demand for Bill of Particulars.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. 11—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

PLEASE TAKE NOTICE that the answer to the notice of motion for a Bill of Particulars of the respondent in the above-entitled cause is as follows:

I

Paragraphs 1 to 7 inclusive of respondents notice relate to particulars as to the amended charge. No answer to paragraphs 1 to 7 inclusive will be given because the sole moving paper in this procedure is the complaint and not the charge. Any decision reached by the Board in this proceeding must be based upon the allegations of the complaint and no additional material included in the charge can be used by the Board as a basis for such decision unless that material was also included in the complaint. The purpose of including a

copy of the charge in the papers sent to respondent is solely to inform respondent as to the manner in which the case was brought to the attention of the Board. 2407

II

In answer to paragraph 8 of the respondent's notice, no particulars can be supplied. The actual names of the majority of the employees who designated the Bakery and Confectionery Workers of America, Local Union 405, as their representative for collective bargaining, are not relevant to the issues before the Board. The only necessity in this respect is that it be established that there was a majority of said employees. Furthermore, such actual names constitute proof which will be required during the course of the hearing only under an appropriate ruling by the Trial Examiner that such actual names are a necessary part of the allegations of the complaint. 2408

Respectfully submitted,

s/ Charles A. Graham
CHARLES A. GRAHAM
Attorney
National Labor Relations Board

October 13, 1937

2409

Intermediate Report.

UNITED STATES OF AMERICA

2410 BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. 11—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

2411 —*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

Upon a charge duly made, as amended, and acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, 49 Stat. 449, Elinore M. Herrick, agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations, Series 1, as amended, Article IV,
2412 Section 1, issued its complaint dated October 7, 1937, against the National Licorice Company, the respondent herein. The complaint and notice of hearing thereon were duly served upon respondent on October 7, 1937 in accordance with said Rules and Regulations, Series 1, as amended, Article V, Section 1.

The complaint in substance alleged that the respondent is a New York corporation engaged in the manufacture, sale

and distribution of licorice and related products; that it causes raw materials and its manufactured products to be transported in interstate commerce; that the production em- 2413
ployees of the respondent, excluding the clerical and supervisory employees, constitute a unit appropriate for the purpose of collective bargaining; that the majority of these employees designated the Bakery & Confectionery Workers International Union of America, as their representative for the purpose of collective bargaining; that on or about July 29, 1937, and at all times since, the respondent has refused to bargain collectively with the said representatives though duly requested so to do with respect to rates of pay, hours of employment and other conditions of employment; that the respondent by its officers and agents, on or about July 16, 2414
1937, formed and sponsored, by undue acts, a labor organization or plan for the purpose of dealing with its employees concerning grievances, labor disputes and conditions of employment and that the respondent has dominated and contributed to the support of and interfered with the administration of the said labor organization or plan down to and including the date of issuance of the complaint; that the respondent by its officers and agents has on or about July 15, 1937, down to and including the date of the issuance of the complaint, urged, persuaded, and warned its employees to refrain from becoming or remaining members of the union herein and made the signing of individual contracts a condi- 2415
tion of employment, and has threatened to close its Brooklyn plant and move to another city; that the said activities of the respondent constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (5) of the Act.

The respondent filed its answer to the complaint and in substance denied that it committed the unfair labor practices

alleged in the complaint, and in addition thereto further alleged by way of separate defenses, (1) that the respon-
16 dent's business is not interstate commerce in nature and therefore the National Labor Relations Board has no jurisdiction herein; (2) that the union at no time ever submitted to or supplied the respondent with any proof indicating that it was a duly designated representative of the majority of the respondent's employees; (3) that notwithstanding the failure of the union to present such proof the respondent, nevertheless, did bargain collectively with the representatives of the said union on July 28, 29 and August 2 and that the union without justification failed and refused to meet respondent as agreed on August 5, 1937, and that the union
17 without justification caused a strike to be called in respondent's plant on August 2, 1937; which caused the closing down of its plant; that on or about August 25, and continuing up to September 20, 1937; the employees of the respondent sought reemployment and voluntarily returned to their work and that on September 9, 1937, the employees in writing, voluntarily and without coercion, repudiated and disaffirmed their alleged membership in the Union and also repudiated the designation of the Union as the bargaining agent and that they voluntarily and without coercion designated and chose a new bargaining committee to represent them in collective bargaining with the respondent; that practically all
18 of the workers with the exception of two out of 135 had returned to work. That pursuant to the designation by the employees of the new bargaining committee the respondent did in September, 1937, bargain with the new committee and as a result contracts of employment were voluntarily signed by the employees and the new committee.

(4) It is further set forth as a separate defense that the National Labor Relations Board in issuing the complaint is

actually interfering with and undermining the business of the respondent, and (5) as a further separate defense it alleges that the complaint is defective in that the original 241
charge is not annexed to the complaint and that the amended charge does not contain clear and concise statements of the facts constituting the alleged unfair labor practices.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the National Labor Relations Board, designated to conduct hearings in this case conducted a hearing in New York City from October 13, 1937, to and including October 20, 1937. The Board appeared by Charles A. Graham; the Union by Kalman Sklar; and the respondent by Abraham Mann, of the firm of Kotzen, Mann & Siegal, New York City. The respondent asked for permission to submit a brief 242
and did submit a memorandum (or brief).

When the hearing opened, the attorney for the respondent filed an original and three copies of the answer herein and a copy of same was served on the Union. Respondent's attorney also made objections to the consolidation of this case, No. II-C-740, with the representation case, No. II-R-350, because the respondent claimed that it was not served with any papers in the said representation case. The attorney for the Board then stated that it was not intended to go into the question of the petition case in any way in this hearing.

Prior to the hearing a written notice of motion for a verified bill of particulars of the amended charge and the com- 242
plaint was filed by the attorney for the respondent. At the very opening of the hearing, the Board's attorney served an "answer to bill of particulars" which substantially answered the demand with respect to the allegations of the complaint; it does not answer the demands for a bill of particulars as to the allegations in the amended charge "because the sole moving paper in this procedure is the complaint and not

the charge". The motions for a further bill of particulars by the respondent's attorney were denied during the hearing. A motion was also made during the hearing and at the conclusion of the Board's case to dismiss the complaint because it did not contain a copy of the original charge. This motion was also denied. The respondent had due knowledge of the facts and was in no wise prejudiced nor was the respondent's position or its opportunity to properly defend itself jeopardized. At the conclusion of the Board's case, the respondent's attorney further moved for the dismissal of the complaint herein on the ground that the Board did not prove its case. Decision was reserved. At the conclusion of the respondent's case, this motion was renewed and such motion to dismiss is hereby denied.

Full opportunity to be heard and cross-examine witnesses and to produce evidence bearing on the issues was afforded to the parties. The right to argue orally at the conclusion of the case or to file briefs was not requested.

Upon the record thus made, the stenographic report of the hearing and all the evidence including oral testimony, documentary and other evidence received at the hearing, the undersigned makes in addition to the above, the following specific findings of fact:

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSQNESS

The National Licorice Company (hereinafter called the respondent), was incorporated in the State of New York in 1902 and is engaged in the business of manufacturing, selling and distributing licorice products for the drug, confectionery and allied trades. The officers are A. H. Scudder, Chairman of the Board; D. D. Sanford, President; W. G.

Carpenter, Vice-President; C. A. Smylie, Secretary-Treasurer; W. J. Healey, Assistant Secretary. The office and plant of the company is located in Brooklyn, New York, and branch offices and plants are maintained by the respondent at Philadelphia, Pennsylvania, Moline, Illinois, and Montreal, Canada. Respondent normally employs about 135 production employees in the Brooklyn plant with which these proceedings are concerned. 2425

II. UNFAIR LABOR PRACTICES

A. *The complainant union*

The Bakery and Confectionery Workers International Union of America, Local No. 405, of Greater New York and Vicinity, and Biscuit and Cracker Workers Union, Local No. 405, of Greater New York and Vicinity, affiliated with the American Federation of Labor (hereinafter called the Union), was the successor in May, 1937 to the Inside Bakery Workers Labor Union No. 19585, American Federation of Labor. All the employees of the respondent herein including the working foremen but excluding executive, supervisory, office, salesmen and truck drivers, are eligible for membership in this union. This complainant union is found to be a labor organization within the meaning of the Act. 2426

It was established that on or about July 7, 1937, the Union opened branch offices a short distance from the respondent's plant. A campaign to organize the employees of the respondent was begun and it was clearly established that on July 14, 1937, the Union had obtained 99 signed membership applications of the 135 employees of the respondent. These signed applications expressly authorized the Union to act as exclusive representative for the purpose of collective bargaining (Board's Exhibit 8). Between July 11 and August 3, 1937, 2427

21 additional signed membership applications were obtained by the Union from the employees of the respondent. The record further indicates that on July 14, 1937, at 9:13 p.m., the Union caused a telegram to be sent to the respondent stating that it represented the respondent's employees as the sole collective bargaining agency and suggested "the advisability of an immediate conference looking toward an agreement concerning the wages, hours and working conditions of said employees" (Board's Exhibit 11). No response to this telegram was received from the respondent. Nevertheless, William A. Galvin, the President of the Union, and August Picariello, a trustee of the Union presented themselves as the proper union representatives at the respondent's office on or about the 20th day of July 1937 and met Mr. Sanford, the President of the respondent, Mr. Carpenter, Vice-President, Mr. Smylie, Treasurer, and Mr. Healey, the Assistant Secretary. The officials of the respondent were informed that the Union represented a majority of the respondent's employees and offered to submit the original signed applications to Mr. Sanford who replied: "Anyway, it would not make any difference what you have there" (p. 96). Before leaving, the Union representatives submitted a list of demands, which the employees wished to have presented to the respondent (Respondent's Exhibit 2). On or about the 20th day of July 1937, the Union representatives called at the National Labor Relations Board in New York and filed a petition for investigation and certification of the Union as the collective bargaining representative of respondent's employees. Pursuant to the request of the regional office of the Second Region of the National Labor Relations Board (Respondent's Exhibits 3 and 5) a meeting was held on July 28, 1937, at the regional office. Present with Mr. John T. McCann of the Regional office were Mr. Sanford and Mr. Healey on behalf of the

respondent, Mr. Galvin and Mr. Sklar, attorney for the Union. The question of the Union's majority was raised and Mr. Sanford remarked that the respondent employed approximately 135 or 140 or 150 employees. It was further stated that "since Mr. McCann had seen more than 51 per cent of the number, it was agreed therefore, we (the Union) did represent the employees" (p. 44). Respondent accepted Mr. McCann's "say-so" that the Union did represent the respondent's employees (p. 580) and recognized the Union as the sole bargaining agency of the employees (pp. 585, 586). 2431

It was also agreed that a conference would be held the following day and pursuant to this arrangement, on July 29, 1937, Messrs. Sklar, Galvin, Picariello and Anderson, as representatives of the Union, called at the office of the respondent. The record indicates that Mr. Sanford read the demands (Board's Exhibit 2) and read counter-proposals and conducted this meeting in such manner as to preclude the Union from arguing or in any way substantiating the demands. This discussion in reality was not bargaining. The respondent informed the Union what it would do and apparently brooked no arguments by the Union in favor of the demands made by respondent's employees. It is evident that the respondent did not collectively bargain with the Union officials in good faith, as indicated herein and as further indicated by respondent's attitude and the fact that the respondent's officials called meetings of its employees soon after the receipt of the Union's telegram (Board's Exhibit 11), on July 15, 1937, and on the 29th of July 1937, at which meetings it decried and deprecated the Union as is further set forth under the heading herein "Labor organization or committee domination by respondent". At the meeting of July 20, 1937, between the Union officials and the respondent's officials, Mr. Sanford had definitely said that he would 2432 2433

not recognize the Union as the collective bargaining agency for the employees, "but would talk with us (the Union repre-
¶434 sentatives) now and ask us to bring the results of the conference to his employees and thereafter it would be required of his employees that they individually sign contracts with them and that he deal directly with his employees and not with the Union" (p. 46). Finally, he (Mr. Sanford), said there would be no written contracts with any union, but (respondent) would sign one with its employees individually (p. 51). During the meeting of July 29, 1937, Galvin mentioned that the respondent was making an effort to form a company union, and Mr. Sanford admitted that he spoke to the employees and called a meeting of the employees after
¶435 he had received notice that the Union was the collective bargaining agent (p. 120). It is apparent that the respondent was not acting in good faith in its negotiations with the Union and that respondent did not at all times bargain collectively with serious intent or in good faith.

On August 2, 1937, Galvin was out of town and Mr. Anderson, Vice-President of the Union, spoke to Mr. Sanford by telephone at about 10 a.m. of that day. A copy of the transcript of the stenographic notes taken at the meeting of July 29 at the respondent's office and which the respondent agreed to furnish the Union, was requested by Mr. Anderson and Mr. Anderson further requested that they meet again
¶436 in an effort to continue negotiations. Mr. Sanford suggested meeting the following Thursday, August 5, 1937. It was further established that at about 12:30 p.m. on the 2nd day of August 1937, about 120 of the 135 employees of the respondent, of their own volition, declared a "stoppage" as they were not satisfied to continue waiting and considered that the respondent was not dealing with the Union in good faith.

This stoppage or strike was called at the employees' own initiative and was not called by the Union or its representatives. Anderson first heard of it by telephone from Picariello after he had spoken with Mr. Sanford and he proceeded immediately to Brooklyn, saw Picariello and Landricini (another representative of the Union), and called Mr. Sanford, who accused the Union of calling an illegal strike. Anderson informed him "that the Union did not call a strike, that more possibly the workers had shown a dissatisfaction in that way" (p. 201). Anderson further informed Mr. Sanford "the Union was willing to do everything in its power to see if we could settle amicably this situation. Mr. Sanford said "No" but called in the police * * * ". Anderson then spoke over the telephone to a police captain at the plant and informed him that the Union did not call the strike and suggested that Mr. Sanford get together with him but Sanford refused to further talk to Anderson. At the suggestion of the police captain, Anderson went to the plant and arrived there about 2 p.m. and there asked to see a company representative. Mr. Healey came out and Anderson again expressed a desire to help in the situation. Mr. Healey said there was nothing he (Anderson) could do. Mr. Anderson asked Healey if they were to meet on Thursday, August 5, as arranged. Mr. Healey said he did not think so and ascertained from Mr. Sanford that the Thursday meeting was called off because of the stoppage or strike. The police captain suggested that Anderson advise the employees to leave the premises because the respondent was hiring guards. Anderson learned that he could speak to the employees through an iron grill gate in back of the building and after so speaking to the employees he learned for the first time that the strikers were locked in. He advised them to leave the building as soon as they could in a quiet and peaceful manner. Shortly before

noon of August 2, 1937 Frank Balke, one of the men working on the boilers, notified the draft engineer (Donoyan) that
2440 he was going to stop work at noon and that arrangements should be made to take over his duties; and other maintenance employees likewise notified the chief engineer (pp. 625, 626). This, and the fact that the employees congregated in the shipping room away from the machines and committed no violence, indicated that the employees, in engaging in this stoppage or strike, acted peacefully. At about 3 p.m. of that day, the female employees left the premises and at about 4 or 4:30 p.m., all the other employees left the premises.

Also, on August 2, 1937 Anderson wrote to the respondent and stated that the Union was ready to meet with it at any
2441 time and place designated by the respondent, "in order to mediate the dispute and through collective bargaining arrive at a mutual satisfactory agreement" (Board's Exhibit 5). The respondent responded that it believed that the Union called the strike and cancelled the August 5 conference and further stated that "it would not set any time for further negotiations until we have had a letter from you informing us as to whether or not this strike was instigated, ordered or approved by your Union or officials of the Union" (Board's Exhibit 6). This last clause was incorporated in the letter notwithstanding the fact that Anderson had informed Mr. Sanford over the telephone and Mr. Hopley at the plant on
2442 August 2, that the Union did not call the strike. The Union did not reply, as it was fearful that the respondent would make use of such reply and indicate to the employees that the Union was not supporting them (pp. 284-285).

On the 2nd day of August, 1937, Anderson also wrote to the New York State Labor Relations Board and requested it to intervene by way of mediation, etc. (Board's Exhibit 7). Mr. Anderson was later informed by the State Labor

Relations Board that it failed to have the executives of the respondent meet with the Union (p. 206). The Union further requested the aid of Mayor LaGuardia of New York City to mediate the strike.

The strike continued from August 2, 1937 to about August 25, 1937. Respondent's plant, with the exception of the office, was shut down during that time. In the interim, the striking employees picketed the respondent's plant and the respondent hired a number of guards. About two weeks after the start of the strike, these guards spoke to the picketing employees about returning to work, called them "damn fools to keep out so long"; "The employees were only wasting their time"; "Why not go back to work" (p. 457); "They were going to lose the strike anyway because the boss had no intentions whatsoever of bargaining with the union officials" (p. 402). The respondent's agents bought refreshments and beer for these picketers. Mr. Healey further told those picketing employees "that there was no way they could win the strike because the union was no good. They was a racketeer and they were satisfied to close up the plant than to talk to the union" (pp. 301, 302); "That they (respondent) were going to close the plant and take the machinery down to Philadelphia" (pp. 308, 356).

On or about the 25th day of August 1937, the respondent reopened the plant and sent letters to its striking employees requesting them to return to work, also that the "company has arranged to provide all available means of protection to its employees in and out of the plant and will use all necessary legal methods to insure the rights of its employees to work unmolested" (Board's Exhibit 9).

A number of these picketing employees were arrested and later the charges were dropped by the respondent. Mr. Smylie, the Treasurer, had one of the girls called from the

picket line and said "you need not worry, because everything is going to be dropped * * * I want you all back, there is no
446 disagreement against any one of you"; "After all, you are all good workers, we don't want to lose you" (p. 466).

On September 17, 1937, Mr. Healey, at the Magistrate's Court, told Carmella Tesora that if she went back to work before October 5 (the adjourned date of the Magistrate's Court case), the charges would be dropped. Miss Tesora went back to work on September 20, 1937 with a group of 14 strikers. On October 5, the charges were dropped and Mr. Healey drove the employees back to the factory (p. 470).

On September 3, 1937, at about 3:30 p.m., the respondent was responsible for a party in the plant for the employees
447 who went back to work and served refreshments and beer. On September 9, 1937, signatures of 109 employees were obtained to the respondent's Exhibit 10, which stated that they had elected a committee as a representative for collective bargaining and authorized these representatives to enter into and sign a contract with the employer * * * and also that the authority given to this committee superseded any other authority to any group, organization or individual (Respondent's Exhibit 10). The committee therein named and as hereinafter indicated (under "Labor organization or committee dominated by respondent"), was and is dominated by the respondent. The respondent should not be permitted to raise
448 its own illegal action as an excuse for not negotiating with the Union herein. It is found that the Union had secured a majority of the respondent's employees, and the Union is still to be considered the representative of these employees until such time as the employees of their own free will choose another bargaining agency.

It is significant at this point to call attention to the testimony of Carmella Tesora (whose testimony was taken as one

of a number of stipulated witnesses). She testified that it was her present wish to be represented through the complainant union (p. 483).

The actions of the respondent and its agents, as hereinabove outlined, amounted to interference, restraint and coercion in violation of the rights given to the employees under Section 7 of the Act.

The production employees, excluding supervisory, office and clerical employees, salesmen and truck drivers employed by the respondent, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

A majority of said employees had designated The Bakery and Confectionery Workers International Union of America, Local No. 405 of Greater New York and Vicinity, a labor organization as defined under the National Labor Relations Act as a representative for the purpose of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment and other conditions of employment. At all times since July 14, 1937 the said Union has been by virtue of Section 9(a) of said Act the exclusive representative of all employees in said Union for the purpose of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

The aforementioned Union had attempted on July 20, 1937 and July 29, 1937 and subsequent thereto, to bargain collectively with respondent as exclusive representative of the respondent's production employees, excluding supervisory, office and clerical employees, salesmen and truck drivers in respect to rates of pay, wages, hours of employment and other conditions of employment.

The National Licorice Company on June 20, 1937 and sub-

sequently thereto, refused to bargain collectively with said Union, as the exclusive representative of the respondent's
452 production employees as herein described in respect to rates of pay, wages, hours of employment and other conditions of employment.

B. *Domination by respondent of the Labor Organization or Committee*

The record indicates that on or about the morning of July 15, 1937, the respondent received the telegram (Board's Exhibit 11) from the complainant union. It is further indicated that on July 16, 1937, at about 3:30, during working
453 hours, at the direction of Mr. Sanford, a meeting was called in the lunch room of the plant of the respondent's employees. In addition to Mr. Sanford, Mr. Smylie, Mr. Healey, as well as Mr. Dorsey, the plant superintendent, were present. Mr. Sanford stated: he would not recognize an outside union and that he wanted the employees to form a "Committee", with which the respondent would bargain. After Sanford and the other officials left the room, the foremen and the foreladies still remained and one forelady (Sadie Callahan) said "Why don't you do what the boss said * * * He (Sanford), was right". However, the majority of the employees were against picking the committee right then (p. 376).

454 On or about July 20, 1937, soon after the Union representatives left Mr. Sanford's office, Mr. Dorsey (the superintendent) at about 3:50 p.m. of that day, during working hours, selected about 12 employees and they were directed to see Mr. Sanford in the office. Mr. Sanford made some offers and discussed a contract between the respondent and the employees, and one employee, Nicholas Andretta, stated that he "thought he (Sanford) was trying to form a company union

and I did not believe in company unions". Mr. Sanford answered it was not a company union but a contract between the company and the workers (p. 379). Mr. Sanford further directed these employees in his office to speak to the workers about the offers he made and "speak to him after we had got together" (p. 380). They did speak to the employees who were displeased with Mr. Sanford's offer (pp. 382 and 450). 245

On July 21, 1937, Mr. Dorsey chose a committee of the employees and the committee was directed to obtain signatures. Mr. Dorsey accompanied this committee to the fifth floor, directed this committee and was present when signatures were obtained. This was on company time and those on the committee were paid for their time by the respondent. Louis Mascola, one of the employees, testified that he did not read the paper which Mr. Dorsey had directed the committee to pass around for signatures but which he signed. Mascola later obtained this paper from Carmella Tesora (who was also one of the committee chosen by Mr. Dorsey), and read the paragraph which in effect stated that they "were going to be a bargaining committee to supersede the outside union". Mascola thereupon deleted his name from this paper and the others of the committee did likewise. Mr. Dorsey took this paper to Mr. Healey, who testified that he destroyed same. These facts and findings are pertinent as they indicate the respondent's attitude towards any outside union and the respondent's methods in the formation and domination of "Committees". 245 245

Mr. Healey testified that on August 27, 1937, he received a telephone call from one who said he was one of the employees but he would not give his name. He stated he was anxious to see Mr. Healey, who thereupon made an appointment to see this unknown striking employee, and he proceeded to the

Y.M.C.A. where he met one William McGann and two other striking employees. Mr. Healey and these three then entered the wash room for discussion. Mr. Healey further testified that he was told by these employees that they were anxious to "come back to work" and they also asked at that time "would it be possible for us to have our bargaining committee and do our own negotiating with you people". And it is noted that McGann became a prime factor in the formation of the "Committee."

The record is not very clear as to the time that McGann went back to work but does indicate that within a day or two after McGann and the other employees returned to work that they asked Mr. Healey "Is it possible for us to organize a bargaining committee of our own?" (p. 716); and Mr. McGann asked of Mr. Healey "What is the procedure for getting a bargaining committee together" (p. 717). Although the record does not clearly indicate how the bargaining committee was elected, if at all, there is a statement by Mr. Healey that McGann told him that a *group* of the employees in the plant had elected a bargaining committee of which he was one (p. 724). As the record indicates, this Committee was not the choice of all of the employees but as testified to by Mr. Healey, each floor *separately* selected two committeemen or delegates and it is apparent that this Committee represented not all the employees but *the group of employees on each floor.*

It is further apparent from the inquiries made by McGann and the others that they were inexperienced in labor relation matters and were guided by the respondent about the selection of the committee and in the drawing of the form (Respondent's Exhibit 10). Mr. Healey directed McGann to seek Mr. Sanford's assistance in drawing this form (p. 724). It is disclosed that Mr. Sanford (Respondent's President) drew

and dictated this form (Respondent's Exhibit 10) and handed it to one of the Committee and that this form later came back with the signatures (p. 728).

The record does not disclose that this Committee had a name or officers but the Committee is considered a labor organization within the meaning of the Act.

It is further established that this Committee was controlled and dominated by the respondent. The testimony of Frank J. Garone, an employee of the respondent for eight years, is most significant. He returned to work with the group of 14 on September 20, 1937 and met the committee of eight in Mr. Sanford's office. When Garone requested if any of this group of 14 would be placed on the committee they informed him that they would have to see Mr. Sanford (p. 963). Garone said "Mr. Sanford, the simple reason is this * * * why we want one of us to be on the committee, we are afraid we might be left out in the cold. We don't know what is going on in the shop." Mr. Sanford replied "I am sorry, the committee has been picked already, there is enough right now on the committee" (pp. 965 and 976). This domination of the Committee is further substantiated by the testimony of Carmella Tesora (p. 749).

Later, when Garone asked William McGann, who was on the Committee, to inquire for a raise for him he was told "We can't argue for you." Garone had to see Mr. Sanford about the raise himself (p. 966).

It is further found:

That the respondent, by its officers and agents, on or about September 9, 1937, and thereafter, formed and sponsored a Committee of its employees as a labor organization.

That this Committee of employees of the respondent is a labor organization within the meaning of the National Labor Relations Act.

That the respondent is dominating and interfering with the administration of this labor organization of its employees by the activities hereinabove set forth, and is contributing financial and other support to said labor organization.

C. *The contracts with individual employees*

It is significant that the respondent, admittedly a member of the Brooklyn Chamber of Commerce, should have its contract (Board's Exhibit 10) almost identical in form with contracts sponsored by the Brooklyn Chamber of Commerce. (See *Atlas Bag and Burlap Company*, 1 N. L. R. B. 292.) This contract is an individual contract and not a collective bargaining agreement, notwithstanding the reference in same to a collective bargaining committee. This is best indicated by the testimony of Carmella Tesora, who was in Mr. Sanford's office on September 20, 1937 with a group of striking employees prior to their return to work:

> "Q. Well, didn't someone speak to Mr. Sanford as to what the effect would be if you didn't sign the contract? A. He said, that he would not protect our jobs and that we would not get that five per cent increase if we didn't sign" (pp. 473-4).

On cross-examination by the respondent's attorney, she further testified:

> "Q. Did anybody threaten that anything would happen if you didn't sign the paper? A. That my job wasn't protected.
>
> "Q. Who said that? A. Mr. Sanford."

It is apparent that the respondent did not consider this Committee a bona fide collective bargaining committee, for it

considered it necessary to obtain the individual signatures of its employees to this contract, instead of having the contract signed by the Committee on behalf of all the employees it represents. As pointed out in the *Atlas Bag & Burlap Company* (*supra*) "although disguised as a collective agreement, the contract, expressly intended for individual signatures by employees, is an individual contract of employment." 246

This contract (Board Exhibit 10) among other provisions, also provided that the employees shall not demand "a signed agreement by the employer with any union," although it prefaces this clause with a meaningless statement that the employees shall have the right to join any union of their own choosing.

This contract further provides (in clause six): "The employees agree that henceforth and during the entire period of this agreement to July 10, 1940, they or any of them will not go out on strike;" thereby depriving the employees of a practical method and the use of the only weapon, by which they may be able to compel the respondent to bargain collectively. 246

It is found that the respondent, by obtaining the individual contracts of employment from its individual employees, and by the acts of its agents as hereinbefore set forth, interfered with, restrained and coerced the employees in the exercise of the rights guaranteed under Section 7 of the National Labor Relations Act. 246

III. Interstate commerce and the effect of the unfair labor practices of respondent on same

The respondent is engaged in the manufacture, sale and distribution of licorice products and confections. The chief raw materials purchased are licorice, sugar, cane molasses,

chocolate, anise oil, coloring, flavoring, oils, cartons, tins, etc. It was also stipulated that approximately 48.2 per cent
4470 of such raw materials are purchased outside the State of New York, principally from Pennslyvania, Connecticut, Illinois, New Jersey, and Iowa; that about 41.2 per cent of the finished products manufactured in the respondent's plant in Brooklyn, New York, with which this proceeding is concerned, are sold and shipped outside the State of New York to about 27 States of the United States; the respondent employs approximately 36 salesmen who canvass customers located in these various states. The respondent has secured about 12 trade-marks in the United States and Canada. The advertising of the Company is conducted in trade journals,
4471 subway and elevated cars.

The respondent's Brooklyn plant was closed from August 2, 1937 to about August 25, 1937, and such "shut-down" and cessation of shipments was caused by the labor dispute herein involved. It is evident that interstate commerce is directly affected by the labor dispute.

It is found that the unfair labor practices of the respondent, as set forth in Section II, occurring in connection with the operations of the respondent, as set forth in this Section, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the
4472 free flow of commerce.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. Respondent, by the speeches and statements of Mr. Sanford, and by the acts and statements of Mr. Healey and

its other agents, as hereinabove described, and as disclosed by the record, thus discouraging membership in the labor organization known as Bakery & Confectionery Workers International Union of America, Local 405, and by refusing to bargain collectively with its employees, and by mailing to its employees a letter herein marked as Board's Exhibit 9, requesting its employees to report back to work and to sign individual contracts, and by dominating and interfering with its employees' Committee and contributing support thereto, and by interfering with its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(1) and Section 2 (6) and (7) of the National Labor Relations Act.

2. Respondent, by dominating and interfering with the labor organization known as the Committee of the employees of the respondent, and by contributing financial and other support as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (2) and Section 2 (6) and (7) of the National Labor Relations Act.

3. Respondent, by refusing to bargain collectively on July 20 and 29, 1937, and thereafter, with its employees through their duly designated representatives, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(5), and Section 2(6) and (7) of the National Labor Relations Act.

WHEREFORE, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining or coercing its employees in the exercise of the
476 right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent cease and desist from dominating or interfering with the formation or administration of the Committee of its employees, or any other labor organization, and from contributing financial or other support to the said Committee of its employees, or any other labor organization.

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3. Respondent cease and desist from refusing to bargain collectively with the Bakery & Confectionery Workers International Union of America, Local No. 405, as the representative of its production employees, except executives and those in a supervisory capacity, salesmen, truck drivers, and other outside employees.

4. In order to effectuate the policies of the Act, take the following affirmative action:

a. Withdraw all recognition from the Committee of the employees of National Licorice Company, as
478 representative of its employees for the purpose of dealing with the respondent with respect to wages, rates of pay, hours of employment, and other conditions of employment, and disestablish the said Committee of the employees of National Licorice Company.

b. Personally inform in writing, each and every one of its employees who has entered into individual

contracts of employment, as set forth in the above findings of fact, that such contracts constitute a violation of the National Labor Relations Act and the respondent is, therefore, obligated to discontinue such contracts as a term or condition of employment, and to desist from trying in any manner to enforce or attempting to enforce such contracts. 247

c. Upon request, enter into negotiations with Bakery & Confectionery Workers International Union of America, Local No. 405, as the exclusive representative of its production employees, excluding executives and those in a supervisory capacity, salesmen, truck drivers, and other outside employees, for the purpose of collective bargaining with respect to wages, rates of pay, hours of employment, and other conditions of employment. 248

d. Post notices in conspicuous places throughout the premises occupied by the respondent, stating that it will cease and desist from in any way interfering with, restraining or coercing its employees in the exercise of the right to self-organization to bargain collectively with representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection; such notices to remain posted for a period of at least thirty (30) consecutive days. 248

e. File with the Regional Director for the Second Region (New York City) on or before ten (10) days after the receipt of a copy of this Report, a report in writing setting forth in detail the manner and form

in which it has complied with the foregoing requirements.

482 It is further recommended that, unless on or before ten (10) days after the receipt of a copy of this Report, the respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring respondent to take the action aforesaid.

Dated: Feb. 7, 1938.

s/ H. R. Korey
H. R. KOREY
Trial Examiner

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Statement of Exceptions to Intermediate Report.

THE UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

SIR:

PLEASE TAKE NOTICE that the respondent, NATIONAL LICORICE COMPANY, hereby excepts (1) to the findings of fact and (2) to the conclusions and recommendations of Trial Examiner H. R. Korey, Esq., contained in his Intermediate Report in the above matter, dated February 7th, 1938.

PLEASE TAKE FURTHER NOTICE that said respondent also excepts to the rulings of the Trial Examiner on (1) admissions of evidence and on (2) all other matters arising

during the course of the hearings in the above matter.

The Exceptions referred to are as follows:

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I. AS TO THE FINDINGS OF FACT

First: Respondent excepts to the statement contained on the bottom of Page 5 of the Report which reads as follows: "The record further indicates that on July 14th, 1937 at 9:13 p. m., the Union caused a telegram to be sent to the respondent * * *," on the ground that respondent's Exhibit 1 in evidence, clearly indicates that the telegram was sent at 9:13 A. M. and not 9:13 P. M.

4189 Second: The respondent excepts to the finding of fact contained on Pages 7 and 8 of the Report which purports to find that the respondent did not bargain in good faith with the Union, on the ground that the said finding of fact is contrary to the overwhelming weight of the evidence of the Board's witnesses, and also of the evidence of Mr. Healey, for the respondent. It is respectfully submitted that all the evidence in the case conclusively establishes the fact that there was collective bargaining in good faith between the respondent and the representatives of the Union, on July 20th, 1938, from two to four P. M.

4190 Third: Respondent further excepts to the findings of the Trial Examiner contained on Page 8 of the Intermediate Report, which purports to find that about 120 of the 135 employees of the respondent "of their own volition" declared a "stoppage," and that this stoppage was called at the employees' own initiative and was not called by the Union, and its representatives. The respondent excepts to this finding of fact, on the ground that it is contrary to the evi-

dence, and to the fair inferences to be drawn therefrom. It appears from all the testimony (a) that this was not a stoppage, but a sit-down strike, and (b) that it was called by the Union, and not by the employees. This is manifest from the failure of the Union to reply to the respondent's letter, which is Board's Exhibit 6.

Fourth: Respondent also excepts to the narration of isolated parts of the evidence, which appears on Page 10 of the Trial Examiner's Report. This purports to set forth what certain guards said to strikers, during the course of the strike. It affirmatively appears from the testimony that such guards were never identified by any of the witnesses for the Board during the hearing. It also appears, in this connection, that counsel for the respondent made a motion to strike out the testimony of the witnesses in this respect. This motion was denied, unless same was connected by the Board during the hearings. In this connection, respondent urges that no litigant can be bound by voluntary statements made without authority. These guards were in the employ of the respondent only for the purpose of maintaining peace and order during the strike. They were employed for nothing else. Any voluntary statements of an unidentified guard, or guards, assuming they were made, cannot, of course, bind the respondent, under well-recognized rules of law.

Fifth: The respondent further excepts to the finding of the Trial Examiner contained on Page 11 of his Intermediate Report which reads as follows: "The committee therein named and as hereinafter indicated (under 'labor organization or committee designated by respondent'), was and is dominated by respondent," on the ground that there is not a scintilla of evidence to support such a finding. In this re-

spect the evidence is conclusive that long prior to the time that the workers voluntarily selected a different bargaining
494 committee, the respondent had bargained with the Union known as Bakery and Confectionery Workers International Union of America, Local No. 405. The evidence is conclusive that after such bargaining, which was held on July 29th, the majority of the workers, on or about September 9th, 1937, chose a new bargaining committee known as "The Collective Bargaining Committee of the Employees of National Licorice Company" (Respondent's Exhibit 10). At that time, the majority of the workers, in writing, repudiated the Bakery and Confectionery Workers International Union of America, Local No. 405, as their bargaining agent (Re-
495 spondent's Exhibit 10). The workers then elected the new bargaining committee, known as "The Collective Bargaining Committee of the Employees of National Licorice Company." The respondent then bargained with this new committee selected by the workers.

Sixth: Respondent excepts to the findings of fact contained on the top of Page 12 of the Trial Examiner's Report which reads as follows: "The act of respondent and its agents, as hereinabove outlined, amounted to interference, restraint and coercion in violation of the rights given to the employees under Section 7 of the Act." There is not a
496 scintilla of evidence to support this finding.

Seventh: Respondent further excepts to the finding of fact contained in Trial Examiner's Report on Page 12 thereof, reading as follows: "At all times *since July 14th, 1937*, the said Union has been by virtue of Section 9(a) of said Act the exclusive representative of all employees in said Union for the purpose of collective bargaining with the re-

spondent in respect to the rates of pay, wages, hours of employment and other conditions of employment." The evidence is directly to the contrary (Respondent's Exhibit 10). 2497

Eighth: Respondent further excepts to the finding of fact contained on Page 12 of the Examiner's Report which states in substance that the respondent refused to bargain collectively with the Union. The proof in the case is directly to the contrary.

Ninth: Respondent further excepts to the finding of the Trial Examiner contained on Pages 13 and 14 of his Intermediate Report which relates to the events which transpired in the plant on or about July 20th or 21st, and which 2498 refers to a certain paper, on the ground that the Report of the Trial Examiner fails to refer to the fact that this paper was not produced and, as a matter of fact, was not in existence. It is conceded by everybody who testified on this hearing that this paper was torn up and destroyed by mutual consent. It is likewise conceded that no rights were either gained or lost under this paper, by either the respondent or the workers. Hence, the reference in the Report to such paper is irrelevant, and has no legal significance.

Tenth: Respondent further excepts to the inferences which the Trial Examiner purports to draw from his narration of 2499 the evidence, regarding the formation of the collective bargaining committee of National Licorice Company, on the ground that the same finds no support in the evidence.

Eleventh: Respondent further excepts to the statement contained on Page 15 of the Trial Examiner's Report which purports to find as a fact that the Committee was controlled

and dominated by the respondent. The evidence is directly to the contrary. The workers first repudiated the Union and
500 then formed their own committee. This was after they had lost the strike. This evidence cannot be in dispute, because it is in writing (Respondent's Exhibit 10).

Twelfth: Respondent further excepts to the finding of fact contained on the top of Page 16, which purports to find that the respondent is dominating and interfering with the administration of the labor organization of its employees. It also excepts to the finding that the respondent is contributing financial and other support to said labor organization. There is no evidence in the record to support such findings.

501 Thirteenth: Respondent further excepts to the purported finding of the Trial Examiner contained on Pages 16 and 17 of his Report, which deals with the subject on contracts. The Examiner holds that this is an individual contract, and not a collective bargaining agreement. This is incorrect, and an exception is taken to such finding. Respondent also excepts to the statement that respondent did not consider the committee a bona fide collective bargaining committee. This is likewise excepted to. Moreover, the National Labor Relations Act does not forbid the making of individual contracts. See *National Labor Relations Board* v. *Jones and Laughlin Steel Corporation.*

502 Fourteenth: Respondent also excepts to the voluntary statement of the Trial Examiner contained in lines 3 and 4 on the top of Page 17 of this Report, where he characterized a statement contained in the contract as "meaningless." Respondent further excepts to the finding of the Trial Examiner on Page 17 of his Report wherein he purports to hold that by obtaining these contracts of employment the respon-

dent interfered with, restrained and coerced the employees in the exercise of their rights guaranteed to them under Section 17 of the National Labor Relations Act. In this connection, it should be noted that not one employee of all those who signed these contracts was produced by the Board to testify that either he or she was coerced into signing it, or that he or she was desirous of having such contract cancelled. The Union cannot obtain cancellation of contracts made between parties who do not desire their cancellation. 2503

Fifteenth: Respondent excepts to the "Conclusions and Recommendations" of the Trial Examiner numbered 1, 2 and 3, on the ground that said conclusions and recommendations are contrary to law, and are not supported by the evidence adduced upon the hearing. 2504

Sixteenth: Respondent excepts to the recommendations contained upon Pages 19 and 20 of the Report and numbered 1, 2, 3, 4(a), 4(b), 4(c), 4(d) and 4(e), on the ground that said recommendations are contrary to law, and are not supported by the evidence adduced upon the hearing.

Seventeenth: Respondent excepts to the denial of the motion to dismiss the complaint of the National Labor Relations Board, as set forth on Page 4 of said Report upon the ground that the Board failed to prove the allegations of the complaint in any particular. 2505

Eighteenth: Respondent excepts to all of the rulings of the Trial Examiner on his admissions of evidence as they appear on the record, where proper exception and objection was taken by the respondent during the course of the hearings. Respondent urges that these rulings now be reviewed by the National Labor Relations Board.

Statement of Exceptions to Intermediate Report.

Nineteenth: Respondent also excepts to the denial of the motion made by respondent at the opening of the hearing to
2506 dismiss the complaint on the ground that the original charge was not attached to the complaint. This omission was a jurisdictional defect, and is in direct violation of Article 2, Section 5, of the rules and regulations of the National Labor Relations Board.

Twentieth: Respondent finally excepts to the rulings of the Trial Examiner by which he relaxed the hearsay rule, thus violating the basic rules of evidence.

Dated: New York, February 17, 1938.
2507

Yours, etc.,

KOTZEN, MANN & SIEGEL,
Attorneys for Respondent,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
City of New York.

To:

NATIONAL LABOR RELATIONS BOARD,
2508 Washington, D. C.
REGIONAL DIRECTOR SECOND REGION,
National Labor Relations Board,
Office & P. O. Address,
233 Broadway,
Borough of Manhattan,
City of New York.

Statement of Exceptions to Intermediate Report.

KALMAN SKLAR, Esq.,
Attorney for Bakery and Confectionery
Workers International Union of America,
Local 405,
Office & P. O. Address,
521 Fifth Avenue,
Borough of Manhattan,
New York City.

COPY

May 4, 1938

Mr. Kalmar Sklar
521 Fifth Avenue
New York, New York
Dear Sir:

Re; NATIONAL LICORICE COMPANY
CASE NO. C-410

This is to advise you that regardless of previous notification or rulings by the Board or the Trial Examiner in the above-entitled matter, you are hereby granted the right, within ten days from the receipt of this letter, to apply for oral argument or permission to file briefs.

Yours very truly,

Nathan Witt
Secretary

Z-236

Order of Severance.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. II—C—740.

In the Matter of
NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

WHEREAS a charge and a petition were filed in the above-numbered cases, respectively; and

WHEREAS an order consolidating said cases for the purposes of hearing was issued on October 9, 1937; and

WHEREAS on October 13, 1937, the Regional Director for the Second Region recommended that Case No. C-410 be heard separately; and

WHEREAS from October 13, 1937, to and including October 20, 1937, a separate hearing was held in Case No. C-410 before H. R. Korey, the Trial Examiner duly designated by the National Labor Relations Board,

IT IS HEREBY ORDERED that Case No. II-C-740 (C-410) be and it hereby is severed *nunc pro tunc* as of October 13, 1937, from Case No. II-R-350 for all purposes.

Dated, Washington, D. C. this 11th day of May, 1938.

By direction of the Board:

NATHAN WITT
NATHAN WITT
Secretary

Notice of Hearing.

NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Thursday, May 19, 1938 at 2 o'clock p. m. in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing, will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., May 13, 1938.

NATHAN WITT
NATHAN WITT
Secretary

(Seal)

(Telegram, dated May 13, 1938.)

TELEGRAM

2518

From NW:JCB
Bureau NLRB
Chg. Appropriation NLRB
MAY 13, 1938

Kotzen, Mann & Siegel
51 Chambers Street, New York, N. Y.
William H. Galvin, Esq.
245 W. 14th Street, New York, N. Y.

Kalman Sklar, Esq.
2519 521 Fifth Ave., New York, N. Y.
National Labor Relations Board, Second Region
Woolworth Building, New York, N. Y.

RE: NATIONAL LICORICE CO., CASE C-410. ORAL ARGUMENT SCHEDULED FOR MAY 19. YOU ARE PERMITTED TO FILE BRIEF ON OR BEFORE MAY 21.

NATHAN WITT, SECRETARY

NATIONAL LABOR RELATIONS BOARD

2520

(Telegram, dated May 18, 1938.)

TELEGRAM

COPY WESTERN UNION

252

NB224 33-XN NEWYORK NY 18 145P

1938 MAY 18 PM 2 05

NATIONAL LABOR RELATIONS BOARD
WASHDC

RE NATIONAL LICORICE COMPANY CASE C-410 PURSUANT TO AGREEMENT MADE THIS DAY BETWEEN COUNSEL FOR UNION AND OUR OFFICE NEITHER SIDE WILL APPEAR FOR ORAL ARGUMENT BEFORE THE BOARD ON MAY NINETEENTH 252

KOTZEN MANN AND SIEGEL

252

TELEGRAM

(Telegram, dated May 18, 1938.)

2524 POSTAL-TELGAPH-COMPANY

NA786 56 NL 8 EXTRA 1938 MAY 18 PM 10-06

TD NEW YORK NY 18

NATHAN WITT

SECRETARY NATIONAL LABOR RELATIONS BD
WASHN DC

APPRECIATE YOUR ADVICE REGARDING HEARING
ON NATIONAL LICORICE COMPANY CASE NUMBER
2525 C-410. THE UNION IS WILLING TO RELY ON THE
RECORD ESTABLISHED BEFORE YOUR TRIAL EX-
AMINER AND ACCORDINGLY RESPECTFULLY AD-
VISES YOU THAT THE UNION WAIVES APPEAR-
ANCE TO PRESENT ORAL ARGUMENT, THURSDAY
MAY 19th 1938 AT TWO PM

BAKERY AND CONFECTIONERY WORKERS IN-
TERNATIONAL UNION LOCAL NUMBER 405
GREATER NEWYORK AND VICINITY WILLIAM
A GALVIN PRESIDENT.

2526

(Telegram, dated May 19, 1938.)

TELEGRAM

From ESF:AN
Bureau N.L.R.B.
Chg. Appropriation N.L.R.B.

KOTZEN MANN & SEIGEL 19th May 1938
51 Chambers St
New York, N. Y.

WILLIAM H. GALVIN, ESQ.
245 W. 14th St.,
New York, N. Y.

KALMAN SKLAR, ESQ.
521 Fifth Avenue
New York, N. Y.

RE NATIONAL LICORICE. ON TELEGRAPHIC ADVISE OF BOTH UNION AND RESPONDENT WAIVING APPEARANCE TO PRESENT ORAL ARGUMENT HEARING SCHEDULED FOR MAY 19 TWO PM IS CANCELED.

NATIONAL LABOR RELATIONS BOARD

C-410

Board's Exhibit 2.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SECOND REGION

Case No. II—C—740.

In the Matter of

NATIONAL LICORICE COMPANY

—*and*—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

STIPULATION

For the purposes of the above-entitled proceeding, the following facts are hereby stipulated and agreed and may be received in evidence, by or in behalf of the National Labor Relations Board or by and in behalf of the respondents, with the same force and effect as if properly qualified witnesses were called before the Board and gave, under oath, sufficient and competent evidence of each of the matters and things herein set out, wholly without prejudice to the right of the National Labor Relations Board or of any party hereto to object to the materiality or relevancy of any such facts and likewise without any prejudice or disadvantage or right of the National Labor Relations Board or the respondent to offer oral testimony or other evidence as to any matter pertinent to the interstate commerce issue or any other issue in this proceeding.

National Licorice Company was incorporated in the State of New York in June, 1902. The officers of the corporation are: A. H. Scudder, Chairman of Board; D. D. Sanford, President; W. G. Carpenter, Vice-President; C. A. Smylie, Secretary-Treasurer; W. J. Healey, Ass't Sec'y; F. G. Smith, Ass't Treas. The company is engaged in the business of

manufacturing licorice products and confections for drug, confectionery, grocery and allied trades. The chief raw materials purchased by the company are licorice, flour, sugar, cane molasses, chocolate, anise oil, color, flavorings, oils, cartons, tins, etc. Approximately 48.2 percent of such raw ma- are purchased outside the State of New York, principally from Pennsylvania, Connecticut, Illinois, New Jersey and Iowa. The finished products of the company are Oriental Licorice Nibs, Y & S Licorice Wafers, Y & S Stick Licorice, "Helps", sugar coated lozenges, Glyza, Swank Liquorice Mix, Hydit, Excelsior Paste, N. L. Co. Spanish Paste, Excelsior Powdered Extract, N. L. Co. Oriental Powdered Extract, Etc. About 41.2 percent of such finished products are sold and or shipped outside the State of New York. The finished products manufactured at the company's Brooklyn Plant are shipped to the following states: Alabama, California, Colorado, Connecticut, Florida, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia and Michigan. Branch offices of the company are maintained at Philadelphia, Pennsylvania; Moline, Illinois and Montreal, Canada. The company employs approximately 36 salesmen who canvas about 25 states of the United States. The advertising of the company is conducted in trade journals, subway and elevated cars. The company has secured approximately 12 trade marks in the United States and Canada.

NATIONAL LICORICE COMPANY
(Sgd) By KOTZEN MANN & SIEGEL
Attys.

NATIONAL LABOR RELATIONS BOARD
(Sgd) By DAVID M MOSCOVITZ
Regional Attorney

by CHARLES A GRAHAM
Att'y for Board

Dated:

Board's Exhibit 3.

National Labor Relations Board
Division of Economic Research
2536 Washington, D. C. nm
October 12, 1937.

SOURCES OF LIQUORICE [1]

"LIQUORICE. The hard and semi-vitreous sticks of paste, black in color and possessed of a sweet, somewhat astringent taste, known as liquorice paste or black sugar, are the inpissated juice of the roots of a leguminous plant, *Glycyrrhiza glabra*, the *radix glycyrrhizae* of pharmacopoeia. The plant is cultivated throughout the warmer parts of Europe, especially on the Mediterranean shores, and to some extent in
2537 Louisiana and California.

"• • • Liquorice enters into the composition of many cough lozenges and other demulcent preparations; and in the form of aromatic syrups and elixirs it has a remarkable effect in masking the taste of nauseous medicines."

---

[1] *Encyclopaedia Brittanica*, Fourteenth Edition, 1929, Volume 14, p. 191.

National Labor Relations Board
Division of Economic Research
2538 Washington, D. C.
October 9, 1937 nm

Board's Exhibit 3.

SCOPE OF OPERATIONS OF THE NATIONAL LICORICE COMPANY [1]

253

"*National Licorice Co.*: Incorporated June 25, 1902, in New York, as consolidation of Young & Smylie, S. V. & F. P. Scudder and H. W. Petherbridge, all of Brooklyn, N. Y.; Mellor & Rittenhouse of Camden, N. J., and the Dominion Licorice & Novelty Co. of Toronto, Can. Manufactures licorice products. Plants located at Brooklyn, N. Y.; Philadelphia, Pa.; Moline, Ill. and Montreal, Canada."

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[1] *Moody's Manual of Investments, Industrials,* Moody's Investors Service, 1937, New York, N. Y. p. 332.

254

254

Board's Exhibit 5.

(Letterhead of Biscuit and Cracker Workers
Local Union No. 405.)

August 2, 1937.

The National Licorice Company,
106 John Street,
Brooklyn, New York.

Gentlemen:

Confirming our telephonic conversation of today with your Mr. Sanford, we understand that the minutes taken by your stenographer at our meeting at your office on Thursday, July 29th, will not be available due to the fact that your stenographer was unable to take the notes with any degree of accuracy, and also because on Friday, July 30th she left on her vacation and, therefore, the notes as she took them were not transcribed.

Although it is regrettable that these notes are not available, this should not stand in the way of an immediate conference between us looking toward an amicable adjustment of the existing controversy.

We beg to advise you that the Union is now ready and will continue to hold itself in readiness to meet with you at any time and place you may designate in order to mediate the dispute and, through collective bargaining, arrive at a mutually satisfactory agreement.

We trust that you will agree with us that an immediate conference is desirable. Awaiting your advise in the matter, we are

Very truly yours,

(Sgd.) JAMES ANDERSON,
James Anderson,
Vice-President

JA;mrg
Registered Mail

Board's Exhibit 6.

(Letterhead of National Licorice Company.)

August 3, 1937.

Mr. James Anderson, Vice-Pres.
The Biscuit & Cracker Workers Local Union No. 405,
245 West 14th St., New York City,

Dear Sir:

Since telephone conversation with you Monday morning, August 2, at which time we arranged a conference between your Union and our Company for Thursday, August 5, at 10.30 A. M., a sit-down strike occurred in our plant at 12.30 P. M. August 2. You will note that the sit-down strike took place within a few hours after said conversation with you.

In talking with you over the telephone and in conference with you, Mr. Galvin and other representatives of your Union previously, we were under the impression that the Union would not call any strikes pending negotiations. In view of the fact that we believe the Union called this sit-down strike we hereby cancel the conference arranged for Thursday, August 5, at 10.30 A. M. and will not set any time for further negotiations until we have had a letter from you informing us as to whether or not this strike was instigated, ordered or approved by your Union, or any official or officials of the Union.

This answers your letter of yesterday's date.

Yours sincerely,

(Sgd.) D. D. SANFORD,
President.
NATIONAL LICORICE COMPANY

DDS/G

Board's Exhibit 9.

(Letterhead of National Licorice Company.)

548 To our Employees:

You are requested to report for work on Monday, August 30th, 1937, at 8:30 A. M.

The company has arranged to provide all available means of protection to its employees in and out of the plant, and will use all necessary legal methods to insure the rights of its employees to work unmolested.

Very truly yours,

NATIONAL LICORICE CO.

549

Envelope addressed to Maria G. Purgatorio, 234 Tillary St., Brooklyn, N. Y.

Board's Exhibit 10.

AGREEMENT made this 20th day of September 1937 by and between the National Licorice Company, a domestic corporation having its principal office and place of business at 106 John Street, Borough of Brooklyn, City of New York, hereinafter called the "Employer", and the duly elected collective bargaining committee consisting of the employees of the Brooklyn plant of the National Licorice Company and each and every one of the employees of said plant of said company, hereinafter called the "Employees".

550

Board's Exhibit 10.

WITNESSETH:

WHEREAS, the Employer is engaged in the manufacture and sale of one cent, five and ten cent licorice specialties and allied products for the drug, grocery and candy trades; and

WHEREAS, the Employees engaged by and working for the Employer have duly and regularly selected and designated the committee whose names are hereunto subscribed as their spokesmen and representatives, which said committee has been so recognized by the Employer; and

WHEREAS, the parties hereto recognize and subscribe to the principles of collective bargaining in its fullest and truest sense, for the mutual interests and benefit of all concerned; and

WHEREAS, the Employees are desirous of having assurance that while employed by and working for the Employer a certain fair wage scale and beneficial working hour schedule now in effect would remain in full force; and

WHEREAS, the Employees, through the Committee, have bargained collectively to obtain such advantages and benefits, and the Employer is willing to give such assurance upon the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the foregoing, and of the mutuality of the agreements herein contained, and of the sum of One Dollar ($1.00) by each of the parties hereto to the other in hand paid, the receipt of which is hereby acknowledged, the parties hereto hereby agree:

Board's Exhibit 10.

FIRST: The Employer agrees to pay all employees engaged by and working for it in any capacity an increase of
54 five per cent of their hourly rate, weekly rate or piece work rate that was in full force and effect on July 16, 1937.

SECOND: The Employer and the Employees mutually agree that the Employer has the right to place each, any or all of his Employees on a piece-work basis. The piece-work rate established shall be arrived at by mutual agreement between the Employer and the Employees of the department involved. In case the Employer and the Employees cannot arrive at a satisfactory piece-work rate, that question shall be submitted to arbitration as hereinafter provided. It is
55 mutually agreed that all piece-work rates that have been established to date and mentioned in the First Paragraph shall be made a part of this contract, and that these rates shall remain in full force and effect until July 10, 1938. It is further mutually agreed and understood that any piece-work rate established will enable the worker to earn at least the same amount of money he had been earning on an hourly basis of pay.

THIRD: It is mutually agreed that the usual hours of employment for all employees except firemen, engineers and maintenance men are not to be more than forty (40) hours
56 per week, eight (8) hours per day, five (5) days per week, and it is further mutually agreed that the usual hours of employment for maintenance men, engineers and firemen are to be not more than forty-four (44) hours per payroll calendar week. The Employer is permitted and has the absolute right to require of the Employees or any or all of them overtime work which said overtime work, except for maintenance men, engineers and firemen, is to be paid for at the rate

of time and one-quarter for all hours worked in excess of five hundred and twenty (520) hours in every thirteen (13) week calendar period and which said overtime work for maintenance men, engineers and firemen is to be paid for at the rate of time and a quarter for all hours worked in excess of five hundred and seventy-two (572) hours in every thirteen (13) payroll calendar week period. Employees not working more than the five hundred and twenty (520) or five hundred and seventy-two (572) hours per thirteen (13) week payroll calendar period are not entitled to any overtime, it being distinctly and mutually understood and agreed that Employees who are on a weekly basis or piece-work basis of pay are not subject to the overtime provisions and payment herein mentioned and are not entitled to any monies over and above their weekly salaries and piece-work payments for such overtime work.

FOURTH: The Employer agrees to give a week's vacation with pay to every employee who has been employed by it prior to June 1, 1937 and has been working for it continuously since that time. This vacation will occur during the period from June 1, to July 20 and will entitle the Employee to the amount of money he or she would have received for working forty (40) hours per week at his or her established rate of pay except for maintenance men, engineers and firemen who will receive the amount of money equal to a forty-four (44) hour week of pay. It is mutually agreed that piece rate workers shall receive the amount of money equal to the average weekly earnings for the four weeks prior to said vacation. It is further mutually agreed that each year the Employees who have been working for the Employer continuously during that said year will be entitled to a vacation on the same basis as outlined above.

Board's Exhibit 10.

FIFTH: The Employer agrees that if the Employees abide by, and fully perform all the terms and conditions of
560 this agreement on their part to be performed, from on and after this date and during the term of this agreement it will not lockout any of the Employees who may be working for it, because of any disagreement or dispute arising hereunder. Nothing in this agreement contained, however, shall in any way affect or interfere with the right of the Employer to discharge Employees or to lay off or dispense with the services of the Employees, or any one, or any part, or all of them, because required to do so by reason of seasonal slackness, lack of orders, dearth of business, or necessitated for repairs, renewal or alteration of plant and/or equipment.

561

SIXTH: The Employees agree that henceforth and during the entire period of this agreement to July 10, 1940, they, or any of them, will not go out on strike.

SEVENTH: Any Employee has the right to join any union of his own choosing or to refrain from joining any union. The Employees or any of them shall not and have not the right to demand a closed shop or a signed agreement by his Employer with any union. This does not in any way restrain the Employees from having a union representing them or advising them in collective bargaining, and the Em-
562 ployer has the absolute and unqualified right to hire or discharge any Employee or Employees for any reason and regardless of his or their affiliation or non-affiliation with any union. It is mutually understood and agreed that the Employer will not discharge Employees because of legitimate union activities conducted outside of company time or company property or because of affiliation with any union. It is further mutually agreed and understood that the col-

lective bargaining committee or the Employees will not intimidate or coerce employees and also will not solicit membership in any union on corporation time or plant property.

A discharged Employee may submit to the Employer facts indicating that his discharge was unreasonable, and the Employer may at its discretion reinstate said Employee, it being the intention of the Employer that Employees be not unjustly discharged. It is strictly understood and agreed, however, that the question as to the propriety of an Employee's discharge is in no event to be one for arbitration or mediation and that any action of reinstatement, if any, will be taken voluntarily by the Employer if it deems such reinstatement advisable.

EIGHTH: The wage scale established in this agreement is to continue in full force and effect until July 10, 1938, except that it may be voluntarily increased by the Employer in any part and in any respect before that time, and if so increased, may be reduced by the Employer, but not below the scale agreed upon to take effect with the signing of this contract.

NINTH: Not less than fifteen (15) days and not more than thirty (30) days prior to July 10, 1938, the Employer or the Committee may file notice of its or their desire for a change in the rate of wages or the number of regular hours of employment per week, or both, as herein and hereby established. During this period a request for consideration in regard to a change in facilities of employment may also be submitted. The term "facilities of employment" means only and relates only to suitable dressing facilites and maintenance of sanitary working conditions in and about the Employer's premises, and shall not be subject to any other construction or interpretation.

If such a notice is filed, and if during the period between the giving of the notice and July 10, 1938, no arrangement,
566 mutually satisfactory, for a change of rate of wages and hours or working facilities or vacations as indicated is reached between the parties, the matters in dispute arbitrable hereunder as are properly incorporated in the notice, and such matters only, shall be settled by mediation and arbitration. The arbitrator designated shall be mutually acceptable to the Employer and the Committee, and the decision of the arbitrator shall be accepted by and shall be final and binding on all of the parties to this agreement. Any decision rendered by the arbitrator subsequent to July 10, 1938, effecting a change in the rate of wages, shall be retroactive to July
567 10, 1938. In the event that the Employer and the Committee cannot agree upon an arbitrator, they shall petition the Supreme Court of the State of New York to appoint a disinterested party to act as arbitrator, the cost of arbitration to be borne and paid equally by the Employer and the Employees. All of the parties understand and agree that the propositions and questions of a closed shop and signing of an agreement with any union are not and shall at no time be matters subject to, or to be submitted to, arbitration.

Not less than fifteen (15) days and not more than thirty (30) days prior to July 10, 1939, the Employer or the Committee may file notice of its or their desire for a change in
568 the rate of wages or the number of regular hours of employment per week or vacations or a change in facilities of employment to be effective for the following twelve months, in accordance with the procedure prescribed for mediation and arbitration as set forth in the above paragraphs.

TENTH: The parties hereto agree that the wage scale agreed upon to become effective July 10, 1938, shall remain in full force and effect until July 10, 1939, and that thereafter every year this agreement shall be renewable automatically in full force and effect, except as mutually agreed

upon and amended in writing in accordance with the provisions of the foregoing article, up to and including July 10, 1940. It is further mutually agreed and understood that all of the terms, provisions and conditions of this agreement shall remain in full force and effect up to and including July 10, 1940, except as the changes specified may be agreed upon as indicated, which changes shall be effective and binding upon the parties hereto only if reduced to writing and signed by the parties hereto.

ELEVENTH: The parties hereto mutually agree that the office and clerical employees, foremen and forewomen, manager of Shipping Department, Assistant Manager of Shipping Department, drivers and their helpers, watchmen and salesmen of the Employer are not covered by this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures as of the day and date first above mentioned.

NATIONAL LICORICE COMPANY
(Sgd.) D. D. SANFORD, Pres.
(Sgd.) U. G. CARPENTER, V. Pres.

INDIVIDUAL EMPLOYEE
(Sgd.) LAURA BREWSTER.

THE COLLECTIVE BARGAINING COMMITTEE OF NATIONAL LICORICE COMPANY.
(Sgd.) BERTHA GROSSMAN
(Sgd.) JENNIE MEROLA
(Sgd.) ANNA BAUER
(Sgd.) LOUIS MASCOLA
(Sgd) WILLIAM MCGANN
(Sgd.) ANGELO COLARULLO
(Sgd.) JOHN MAHNKEN
(Sgd.) JAMES SWEENEY

Board's Exhibit 11.

(Postal Telegraph Form.)

572 Recorder's Sign WV | Telephone Number CHE 2 8058 | Class of Station or Postal Coin Box Number SUB

DUPLICATE OF TELEGRAM TELEPHONED

Check

70 1 EX NL

TD NEW YORK NY

1937 JUL 14 PM 9 13

NATIONAL LICORICE CO

573 106 JOHN STREET BROOKLYN NY

PLEASE BE ADVISED THAT THE BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA LOCAL 405 OF GREATER NEWYORK AND VICINITY SITUATED AT 245 WEST FOURTEENTH STREET NEWYORK REPRESENT THE EMPLOYEES OF NATIONAL LICORICE COMPANY OF 106 JOHN STREET BROOKLYN NEWYORK AS THEIR SOLE COLLECTIVE BARGAINING AGENCY STOP WE SUGGEST THE ADVISABILITY OF AN IMMEDIATE CONFERENCE LOOKING TOWARD AN AGREEMENT COVERING THE WAGES HOURS AND WORKING CONDITIONS OF SAID EMPLOYEES 574

BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA LOCAL 405 WILLIAM A GALVIN PRESIDENT

Subscriber's Name—SAME

Board's Exhibit 12.

BAKERS' JOURNAL, THE OFFICIAL ORGAN OF THE BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, VOLUME LI, CHICAGO, SATURDAY, JULY 17, 1937, NO. 39. 2575

Page 2, Column 2.

ORGANIZING ACTIVITIES
FIRST DISTRICT

Bro. Wm. Galvin, business representative of the National Biscuit Company Local 405, of Greater New York, has been assigned to assist contract negotiations with the National Biscuit Company management and advise in general organizing efforts of cracker and biscuit factory employes. 2576

Satisfactory progress is reported from our Shredded Wheat National Biscuit Company plant, Local 357, of Niagara Falls, N. Y.

Page 3, column 4; page 4, column 1.

FROM LOCAL 357, NIAGARA FALLS

The meeting was called on June 27 by Bro. J. Hickman, Bro. Galvin, President of N. B. C. Union in New York, was introduced to the gathering and he then took charge of our meeting. Election of permanent officers was held with results as follows: President J. Hickman; Vice-President, G. Moore; Financial Secretary, A. Chambers; Recording Secretary M. Hickman; Sergeant-at-arms, J. Cheatam; Trustees, M. Klein, S. Dell, A. Saxton. Bro. Galvin then initiated all the officers elected and following this initiation of all the members present was held. Brother Galvin explained to the gathering that the company has changed its opinion of unions 2577

Board's Exhibit 12.

and are now all for their employes belonging to a good legitimate organization. The N. B. C. is organized with the A. F.
2578 of L. throughout the country. Bro. Galvin explained that the best policy to carry out in a plant was for all the employes to belong to one union. It is best to become affiliated with a union that knows your line of work. The A. F. of L. is a financially stable organization which carried on all through the depression. The N. B. C. knows when the A. F. of L. makes an agreement they stick with it. Bro. Galvin explained that our product has to be distributed through the agencies in New York and they all belong to the A. F. of L. Now they can help us and we should be tied up with them. Bro. Galvin explained that any boss who will fire any
2579 union member for union activities will be fired by the Co. Our Bro. Galvin at one time was Dr. Oake's office boy. He explained that there was no favoritism in a union. Every job has a price and not a man or girl and everybody is raised up to that price and not cut down. There is equal pay for equal work. The union protects the older man from the undermining of some boss who wants to make a name for himself. You can't expect the bosses or the N. B. C. to organize your union. You have to do that yourselves. In a union there is equal distribution of the lay-off and the over-time. There is no need for a strike. If you show that you have a union in the plant you will be recognized. The
2580 N. B. C. knows the law and they have a policy which they live up to. The question was brought up to Bro. Galvin about a man ready to receive a pension and he explained that his joining the union would not effect this in any way. If we stick to it and build up our union all of our small grievances will be straightened out. Frat. MABEL HICKMAN, Rec. Secretary.

Respondent's Exhibit 1.

(Postal Telegraph Form)

Received at
111 Washington St.
Brooklyn, N. Y.
Tel. TRiangle 5-1081

25¢

NA3 70 NL 1 EXTRA-TD NEWYORK NY 9 13A JUL 14 1937

NATIONAL LICORICE CO-
106 JOHN ST BROOKLYN NY-

25¢

PLEASE BE ADVISED THAT THE BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA LOCAL 405 OF GREATER NEWYORK AND VICINITY SITUATED AT 245 WEST FOURTEENTH STREET NEWYORK REPRESENT THE EMPLOYEES OF NATIONAL LICORICE COMPANY OF 106 JOHN STREET BROOKLYN NEWYORK AS THEIR SOLE COLLECTIVE BARGAINING AGENCY STOP WE SUGGEST THE ADVISABILITY OF AN IMMEDIATE CONFERENCE LOOKING TOWARD AN AGREEMENT COVERING THE WAGES HOURS AND WORKING CONDITIONS OF SAID EMPLOYEES-

25¢

BAKERY & CONFECTIONERY WORKERS INTERNATL UNION OF AMERICA LOCAL 405
WM A GALVIN PRESIDENT.

733A

Respondent's Exhibit 2.

July 19, 1937

AGREEMENT

BETWEEN the National Licorice Company of 106 John Street, Brooklyn, New York (hereinafter called the Company) and its employes as represented by the Bakery and Confectionery workers International Union of America and its designated subordinate Local Union #405 of Greater New York and Vicinity (hereinafter called the Union).
It being the desire of the employes of the Company who are members of the above Union, to enter into a mutual agreement with the Company, for the purpose of establishing a harmonious relationship that will further the interest of both parties, it is hereby proposed that the following agreement is entered into, and mutually agreed to by both parties, for the regulation of wages, hours and working conditions through collective bargaining.

1. The Union is the sole collective bargaining agency for all the employes of the Company who are not in an office or supervisory capacity.

2. The Company shall employ none but bona fide members of the Union who are in good standing.

3. (a) The wages of all male employes who are on an hourly basis shall be increased Thirty Cents (30c) per hour over their present rates.

(b) The wages of all female employes who are on an hourly basis shall be increased Fifteen Cents (15c) per hour over their present rates.

Respondent's Exhibit 2.

(c) The rate of all piece-work operations shall be increased Fifty Per Cent (50%) over the present rate for said piece-work operations. 258

(d) No employe shall be transferred from an hourly basis to a piece-work basis, or a piece-work basis to an hourly basis, without the consent of the Union.

(e) Employes on piece-work shall be guaranteed employment at an hourly rate of Fifty Cents (50c) in accordance with section 4-E below.

4. (a) The hours of work shall be eight (8) hours per day with a lunch period of one half (½) hour at the end 2584
of the first four hours, and not included in the eight (8) hours.

(b) The days of work shall be five (5) days per week (Monday to Friday inclusive).

(c) All work beyond eight (8) hours per day, and all work on Saturdays, shall be paid for at the rate of time and one half.

(d) All work on Sundays and Legal Holidays shall be paid for at the rate of double time.

(e) All employes scheduled for work shall be guaranteed 2587
at least eight (8) hours work on the day scheduled.

5. All present employes of the Company having more than one year's service shall receive two (2) weeks' vacation with pay (piece-workers, during vacations, shall be paid at a rate equal to the average wages each received during the preceding year, plus the Fifty Per Cent (50%) increase herein above provided for.

Respondent's Exhibit 2.

6. (a) In slack periods all the present employes of the Company shall divide the available employment equally
590 amongst them on a departmental basis.

(b) Over-time and holiday work (if any), shall be divided equally amongst all employes on a departmental basis.

(c) A chart shall be posted in a conspicuous place upon which the foreman shall note the schedules referred to in sections 6-a and 6-b.

7. (a) All new employes of the Company shall make application for membership in the Union after a trial period
591 of one (1) week.

(b) New employes on piece-work shall be paid the prevailing rates per unit, except that during the first month's employment they shall be guaranteed wages at the rate of Forty Cents (40c) per hour.

(c) New female employes placed on hourly rate positions, who have had no previous experience with the Company shall receive the following rates:

During 1st Month—40c per hour
During 2nd Month—45c per hour
592 During 3rd Month and thereafter—50c per hour

(d) New male employes placed on hourly rate positions, who have had no previous experience with the Company shall receive the following rates:

During 1st Month—60c per hour
During 2nd Month—65c per hour
During 3rd Month and thereafter—70c per hour

Respondent's Exhibit 2.

8. (a) A delegate for each department, whose duty it shall be to attempt adjustment of any grievances therein, shall be appointed by the Union. 2593

(b) A "Shop Committee" shall be appointed by the Union and shall meet with the Manager whenever necessary to aid in the proper adjustment of any grievances.

(c) An official representative of the Union must be permitted to visit the shop at any time after notice to the manager or foreman.

(d) Any grievances not adjusted through Sections 8-a and 8-b shall be the subject of an immediate conference between representatives of the Company and representatives of the Union. 2594

9. The Company, by arrangement with the Union, may print a Bakery and Confectionery Workers Union-Label on its candy wrappers without cost, or may affix same to all its products at a charge of Fifteen Cents (15c) per one thousand (1,000) labels, when its products are produced under the conditions hereinabove agreed to.

10. The Company shall not discharge any employe without previous notice and discussion with an official representative of the Union. 2595

11. In the event that any dispute may arise, during the life of this agreement, that cannot be satisfactorily adjusted, the same shall be referred to arbitration by a committee of three (3) persons who shall be designated as follows: One to be selected by the Company, one to be selected by the

Union, and the two so selected to choose a third person; should the first two fail to choose a third person within five
2596 days, the United States Department of Labor shall be requested to designate a third and impartial person. The Arbitration Board so constituted shall render a decision within forty-eight (48) hours. The decision thus rendered shall be accepted and binding upon both parties.

12. This agreement shall become effective from this date ————, and shall remain in effect for a period of one (1) year, and shall continue in effect from year to year unless either party desires to change or modify same, when thirty (30) days notice to so change and modify shall be given by
2597 either party prior to the then date of expiration. Such notice to be given in writing.

FOR THE COMPANY	FOR THE UNION
.....	.....
.....	.....
(seal)	(seal)

Respondent's Exhibit 6.

CHelsea 2-8058

2598 WILLIAM A. GALVIN
President

BISCUIT & CRACKER WORKERS LOCAL UNION NO. 405
GREATER NEW YORK & VICINITY

Bakery & Confectionery Workers
International Union of America

245 West 14th Street
New York, N. Y.

Respondent's Exhibit 10.

SEPTEMBER 9, 1937. 2596a

NATIONAL LICORICE COMPANY,
106 John Street, Brooklyn, N. Y.

Attention: Mr. D. D. Sanford, President

GENTLEMEN: We, the undersigned employees of the National Licorice Company, hereby notify you that we have this day elected a committee of our fellow workers, whose signatures are affixed hereto, as our representatives in collective bargaining with you. We authorize these representatives to enter into and sign a contract with the employer provided it contains substantially the provisions outlined to us by the Management. 2597a

You are also notified that the authority given to our fellow workers to represent us in collective bargaining supersedes any authority that any of the undersigned may have given to any other group, organization or individual, and no one except the collective bargaining committee consisting of our fellow workers is authorized to represent us in collective bargaining.

Very truly yours, 2598a

COMMITTEE
Bertha Grossman
James Sweeney
Angelo Colarullo
Anna Bauer
John Mahnken
Louis Mascola
Jennie Merola
William McGann

(Here follow 118 signatures of individual employees, of which 12 are by mark, witnessed as signatures by William McGann.)

Decision and Order.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of

NATIONAL LICORICE COMPANY

—and—

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 405, GREATER NEW YORK AND VICINITY

Case No. C-410.—Decided May 31, 1938.

Licorice Products Manufacturing Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization; antiunion statements; threat to close and transfer plant; persuading employees to refrain from forming or joining or to resign from union; circulation of antiunion petition among employees—*Company-Dominated Union*: abortive attempt to initiate and form; domination and interference with formation and administration; support; coercion to join; disestablished, as agency for collective bargaining—*Contract*: collective, with organization found to be company-dominated, void; individual contracts of employment, void, as contrary to provisions of the Act; coercion and intimidation to sign; "yellow dog"; employer ordered to cease and desist from giving effect thereto—*Strike—Picket-*

7 N. L. R. B., No. 73.

ing—Unit Appropriate for Collective Bargaining: production employees, including working foremen, but excluding
2602 executive, supervisory, and office employees, salesmen, and truck drivers; no controversy as to—*Representatives*: proof of choice: applications for union membership—*Collective Bargaining*: employer's duty; negotiation in good faith: meeting with representatives but with no *bona fide* intent to reach an agreement; refusal to recognize union, as bargaining agency representing employees; special forms of remedial order: recognition as exclusive representative; enter into agreement with representatives of employees, if understanding is reached.

2603 Mr. Charles E. Graham, for the Board.

Kotzen, Mann & Siegel, by Mr. Abraham Mann and Mr. Joseph Yaspan, of New York City, for the respondent.

Mr. Kalman Sklar, of New York City, for the Union.
Mr. Wallace M. Cohen, of counsel to the Board.

STATEMENT OF THE CASE.

On July 21, 1937, Bakery and Confectionery Workers International Union, Local Union No. 405, Greater New York and Vicinity, herein called the Union, filed with the Regional
2604 Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees at the Brooklyn, New York, factory of National Licorice Company, Brooklyn, New York, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 13, 1937, the

Union, having previously filed a charge, duly filed an amended charge with the afore-mentioned Regional Director, alleging that the respondent had engaged in and was engaging in 2605
unfair labor practices within the meaning of Section 8, subdivisions (1), (2) and (5), of the Act. On October 7, 1937, the National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, the said Regional Director, duly issued and served its complaint and notice of hearing upon the respondent and the Union. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (5), and Section 2, subdivisions (6) and (7), of the Act.

In respect to the unfair labor practices, the complaint 2606
alleged in substance: (1) that form on or about July 15, 1937, the respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by persuading and coercing its employees to refrain from becoming members of the Union, and to sign individual contracts of employment, by threatening to close down its Brooklyn plant and move to another city if the employees joined or assisted the Union, by making raises of pay conditional upon nonmembership in the Union, by threatening discharge and other reprisals if they became members of the Union and not members of an organization formed and sponsored by the respondent, and by keeping 2607
under surveillance the meetings and meeting places of the employees who were members of the Union; (2) that on or about July 16, 1937, the respondent initiated, formed, sponsored, dominated, and contributed support to a labor organization, known as The Collective Bargaining Committee of National Licorice Company, herein called the Committee; (3) that although the Union has been, since on or about

July 28, 1937, the exclusive representative of the production employees, excluding the clerical and supervisory employees,
2608 the respondent on that date and at all times since then refused to bargain collectively with the Union as the exclusive representative of such employees; and (4) that, by reason of the afore-mentioned acts, substantially all of the employees of the respondent went on strike on August 2, 1937, and have remained on strike from said date to the date of the issuance of the complaint.

On October 13, 1937, the respondent duly filed its written answer, denying all of the allegations of the complaint except those relating to its corporate existence and the allegation that its employees went on strike on August 2, 1937.
2609 The respondent urges as a separate and distinct defense: (1) that the Board has no jurisdiction over the respondent or the subject matter of the complaint herein, and that this proceeding is therefore irregular and void; (2) that at no time has the Union submitted or supplied to the respondent proof that it represented a majority of the respondent's employees; (3) that the respondent conferred with representatives of the Union on or about July 19, 1937, and bargained with the Union on July 28, 29 and August 2, 1937; that the Union failed to appear on August 5, 1937, and bargain further as agreed upon, but instead, without justification, caused a strike to be called in the respondent's plant;
2610 that on August 25, 1937, the employees voluntarily and without solicitation commenced to return to the plant and practically all had returned by September 20, 1937; that, on September 9, 1937, the employees in writing voluntarily disaffirmed and repudiated their alleged membership in the Union and the designation of the Union as their bargaining agent, and voluntarily chose a committee to represent them in collective bargaining with the respondent; that the

strike was terminated and almost all of the employees have returned to work; that the respondent has bargained with the aforesaid committee and, as a result thereof, has entered into contracts signed and executed by the respondent, the committee, and the employees of the respondent; (4) that the Board in issuing the complaint is actually interfering with and undermining the business of the respondent; and (5) that the complaint is defective in that the original charge is not annexed to the complaint[1] and that the amended charge does not contain clear and concise statements of the facts constituting the alleged unfair labor practices. The answer concluded by moving that the complaint be dismissed. Prior to the hearing, the respondent filed a written notice of motion for a verified bill of particulars of the amended charge and complaint.

On October 8, 1937, the Board, acting pursuant to Section 9(c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued an order directing an investigation and hearing on the petition. This order was served at the hearing.[2] On October 9, 1937, pursuant to Article III, Section 10, subdivision (c) (2) of said Rules and Regulations, the Board ordered a consolidation of the petition and charge for the purposes of hearing and designated H. R. Korey, Trial Examiner.

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[1] It should be noted that the amended charge in this proceeding was not supplementary to the original charge but in substitution therefor.

[2] The respondent's objection to the insufficient notice resulted in postponement of the hearing on the petition.

Pursuant to notice, duly served, a hearing was held in New York City from October 13, 1937, to and including October 20, 1937, before the Trial Examiner. The Board, the respondent and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the commencement of the hearing, counsel for the Board served an answer to the bill of particulars requested by the respondent, setting forth answers to the demands relating to the allegations in the complaint but declining to answer the demands relating to the allegations in the charge, "because the sole moving paper in this procedure is the complaint and not the charge." The respondent's motion for further bill of particulars was subsequently denied during the hearing. The respondent raised certain objections to the consolidation of the petition and charge, but counsel for the Board agreed not to consider the petition at this hearing.[3] The respondent moved to dismiss the complaint because it did not contain a copy of the original charge. This motion was denied by the Trial Examiner. At the conclusion of the Board's case and again at the conclusion of the respondent's case, the respondent moved for the dismissal of the complaint on the further ground that the Board had failed to prove its case. This motion was also denied.

During the course of the hearing, the Trial Examiner made a number of rulings on objections to the admission and exclusion of evidence. The Board has reviewed these rulings and rulings made with respect to the afore-men-

[3] On May 11, 1938, the Board ordered the petition severed from the charge *nunc pro tunc* as of October 13, 1937.

tioned motions and other motions made by the parties and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The respondent requested leave to submit a memorandum on the case. Leave was granted and the memorandum was submitted. 2617

On February 8, 1938, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (5), and Section 2, subdivisions (6) and (7), of the Act. He recommended that the respondent cease and desist from these violations and that the respondent proceed to bargain collectively with the Union.

Thereafter, the respondent filed exceptions to the Intermediate Report. On May 4, 1938, the parties were given leave to request oral argument and file briefs. The Union duly filed a request for oral argument, but argument was subsequently waived by agreement of the parties. The Board has considered the exceptions, and the respondent's memorandum to the Trial Examiner, and finds the exceptions to be without merit. 2618

Upon the entire record in the case the Board makes the following:

FINDINGS OF FACT.

I. THE BUSINESS OF THE RESPONDENT. 2619

National Licorice Company is a New York corporation, incorporated in June 1902, and having plants in Brooklyn, New York; Philadelphia, Pennsylvania; Moline, Illinois; and Montreal, Canada. The proceedings herein involve only the Brooklyn plant. The respondent is engaged in the business of manufacturing and selling licorice products and

confections for drug, confectionery, grocery, and allied trades. The chief raw materials utilized are licorice, flour, sugar, cane molasses, chocolate, anise oil, color, flavorings, oils, cartons, and tins. Approximately 48 per cent of such raw materials are purchased from points outside the State of New York. About 41 per cent of the finished products of the respondent are sold and shipped outside the State of New York to points in 27 States.

Excluding clerical and supervisory employees, the respondent normally employs approximately 140 persons in its Brooklyn plant.

II. THE ORGANIZATIONS INVOLVED.

The Bakery and Confectionery Workers International Union of America, Local Union No. 405, is a labor organization, affiliated with the American Federation of Labor, and successor, in May 1937, to the Inside Bakery Workers' Federal Labor Union No. 19585, also affiliated with the American Federation of Labor. It admits to membership all employees of the respondent, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers.

The Collective Bargaining Committee of National Licorice Company is a labor organization admitting to membership all employees of the respondent, including working foremen, but excluding executive, supervisory and office employees, salesmen, and truck drivers.

III. THE UNFAIR LABOR PRACTICES.

A. *The chronology of events.*

Early in July 1937, the Union began to obtain signatures of employees to applications for membership in the Union.

By the evening of July 14, 1937, after 99 of approximately 140 employees had signed applications, William A. Galvin, president of the Union, sent a telegram to the respondent, advising that the Union represented the employees of the respondent as "their sole collective bargaining agency" and suggesting a conference "looking toward an agreement covering the wages, hours and working conditions" of the employees. Although the respondent received this telegram on the morning of July 15, no reply was ever made. During working hours on either the afternoon of July 15 or July 16 and as a result of the receipt of the telegram, the respondent called a conference of its employees in the lunch room of the plant. David D. Sanford, president, Walter J. Healey, assistant secretary, and Dorsey, superintendent of the plant, addressed the employees. In addition to reading from a prepared statement (not introduced in evidence), Sanford, who was in complete charge of the plant, chided the employees about going to "outsiders" with their labor problems, declared that the respondent would not recognize an outside union, and advised them to pick their own committee and "come to my office and bargain with us." After the officials of the respondent had withdrawn, the foremen and foreladies reiterated Sanford's suggestion, urging, "Why don't you do what the boss said?" The employees, however, at a meeting that evening expressed their opposition to selecting a committee.

On or about July 20, Galvin and August Picariello, a trustee of the Union, went to the offices of the respondent, presented a proposed contract embodying the demands of the Union, and sought to confer with the officials of the respondent. Sanford, Healey, Carpenter, and Smylie were present in behalf of the respondent. Although Galvin showed his credentials, the officials professed ignorance concerning his

identity, and denied that the Union represented the employees of the respondent. Galvin offered to show the original applications for membership, which he had brought with him, but withdrew the offer when Sanford, in refusing to receive them as proof of representation, said "Anyway it would not make any difference what you have there." That afternoon during working hours approximately 14 employees, selected as "the most intelligent in our plant that could grasp what we were trying to say to them," were summoned to Sanford's office, where they were informed that "two very lovely young gentlemen who purported to be representatives of yours" had visited Sanford that morning. Sanford proceeded to offer his employees a 5 per cent increase, time and a half for overtime and a week's vacation, with pay, beginning July 1, 1938. He directed this group to convey his offer to the employees "and speak to him after we had got together." The offer was unsatisfactory to the employees.

Within a day or two after this incident, it appears, Dorsey selected a committee of approximately eight employees to circulate a petition nominating a committee to "supersede" the Union as bargaining representative of the employees. There is evidence that Dorsey was present while a number of signatures were obtained. The attempt proved abortive, since the signers deleted their signatures immediately upon discovering the import of the document, and returned it to Dorsey, who, after taking the paper into Sanford's office, returned and said, "It is all off."

The Union, on July 21, 1937, filed a petition for investigation and certification with the Regional Director for the Second Region. As a result of the filing, the Regional Office arranged a conference for July 28, 1937, between Sanford and Healey, for the respondent, and Galvin and Sklar, for the Union. John T. McCann, of the Regional Office, examined

the signed applications. When asked by the respondent "if in his opinion" the Union represented a majority of the respondent's employees, Healey testified that McCann replied that he was "convinced in his mind that they did." According to Healey: "We said we were willing to accept Mr. McCann's say-so that these men did represent our employees. We would agree to confer with them at any time and place convenient to both sides." A conference was arranged for July 29, 1937. Sanford, Smylie, Healey, and a stenographer were present representing the respondent, and Galvin, Anderson, Sklar, and Picariello represented the Union. Sanford, reading from a carefully prepared statement, disposed of substantially all the demands contained in the proposed contract, which the Union had left with the respondent on or about July 20, by eliminating them one by one as being "impossible," "impractical," "preposterous," or "unworkable." He then presented counter proposals very similar to those made to the group of employees on or about July 20, 1937. The meeting was conducted by Sanford in a manner designed to preclude the Union from discussing or arguing its demands. He stated that he would not recognize the Union as the collective bargaining agency for the employees and that he would make no written contract with the Union, but would talk with the Union representatives and ask them "to bring back the results of the conference to his employees and thereafter it would be required of his employees that they individually sign contracts with them and that he deal directly with his employees and not with the Union." Galvin remarked to Sanford that his statements were familiar to him, to which Sanford replied, "I admit the Brooklyn Chamber of Commerce is advising us in these proceedings." Upon conclusion of this parley, Galvin said, "We'd better get together for a further conference," but no further arrangements were made.

On the morning of August 2, 1937, Anderson, acting for Galvin during his absence, telephoned Sanford concerning the
2632 stenographic notes of the meeting of July 29, which were to have been made available to the Union. Sanford informed him that the notes had been jumbled in the transcription, and that in any event the stenographer had left on her vacation. On Anderson's request that a date be fixed for further negotiations, August 5 was agreed upon. At the plant a conspicuous unrest among the employees throughout the morning culminated in a "stoppage" of work following the noon hour. All of the employees gathered in the shipping room away from the machines and remained there throughout the afternoon. Conflicting testimony obscures the real facts
2633 surrounding the matter of the employees' occupation of the premises that afternoon; but it appears that the police and armed guards were called, and that the girls left at 3 o'clock, and the men left around 4:30 following a speech read by Smylie. According to Healey, this speech was prepared "following our practice of being very, very careful of what we said in any stage of this procedure." Smylie told the employees to vacate the premises or the guards would forcibly remove them. There was no violence. The strike appears to have been a spontaneous expression of dissatisfaction with the trend of the negotiations between the Union and the respondent.

2634 Anderson received notice of the strike shortly before 1 o'clock and immediately called Sanford on the telephone. Anderson denied Sanford's accusation that the Union had called the strike, and said that he would do anything in his power to settle it. Sanford refused to talk to Anderson and turned the telephone over to Michael Richter, a police captain, who suggested that Anderson come down to the plant and talk things over. At the plant, Anderson spoke

to Healey, reiterated his denial that the Union had called the strike, and repeated his offer to negotiate a settlement of the dispute. Healey consulted Sanford and afterwards informed Anderson that there was nothing he could do and that the meeting of August 5 was canceled. The evidence shows that Anderson invoked the assistance of several outside sources to obtain a settlement of the strike, but that his efforts were unsuccessful, due to Sanford's refusal to meet with the Union representatives. In the evening of August 2, Anderson wrote to the respondent stating that the Union was ready to meet with it at any time or place which the respondent would designate "in order to mediate the dispute and through collective bargaining arrive at a mutually satisfactory agreement." The respondent replied to this letter declaring that it believed the Union had called the strike. It canceled the meeting of August 5, and asserted that it would not "set any further time for negotiations until we have had a letter from you informing us as to whether or not this strike was instigated, ordered or approved by your Union or officials of the Union." The Union alleged that its failure to reply to this letter was due to a feeling that the respondent desired to use any reply it might make to enable the respondent to alienate the employees from the Union.

The strike lasted until August 25, 1937, during which time the plant was shut down and constantly patrolled by guards and picketed by striking employees. According to the testimony of Nicholas Andretta, employed by the respondent for about 7 years prior to the strike, of Carmela Tesora, employed about 9 years, and of James Landriscina, a Union organizer, the guards bought lunches and beer for the girls. They continually rebuked the pickets, calling them "damn fools to keep out so long," urging them to go back to work,

and claiming "the employees were only wasting their time," and "they were going to lose the strike anyway because the
2638 boss had no intentions whatsoever of bargaining with union officials." The guards to whom these statements were attributed did not testify. It is alleged that Healey told the pickets that "there was no way they could win the strike because the Union was no good. They was a racketeer and they were satisfied to close up the plant than to talk to the Union," and "that they were going to close the plant and take the machinery down to Philadelphia." Healey denied making these statements and claimed that he had never requested the employees to return to work, but in the light of all the evidence, we cannot credit this portion of Healey's
2639 testimony.

The respondent reopened its plant on August 25, and sent letters to its employees requesting them to return to work and informing them that "the Company has arranged to provide all available means of protection to its employees in and out of the plant and will use all necessary legal methods to insure the rights of its employees to work unmolested." The employees drifted back to work from August 25 until September 20. On or about August 27, in reply to an anonymous telephone call, Healey met William McGann and two other employees at the Y. M. C. A. They expressed a desire to return to work, but stated that they were afraid
640 to do so. They asked if it would be "possible for us to have our bargaining committee and do our own negotiating with you people." Healey said they could have their bargaining committee if they obtained a majority. He then arranged for their transportation to and from work. A few days after his return to work, McGann, upon making further inquiries, was directed by Healey to form a committee which could be demonstrated to represent a majority of the employees.

Shortly thereafter, McGann reported that a "group" of employees had elected a committee, of which he was a member, and wanted to know what steps to take to gain recognition. 264
Healey referred him to Sanford for assistance in drawing the form[4] which Sanford prepared and dictated. It was circulated by McGann on or about September 9, 1937, and returned with approximately 110 signatures besides those of the 8 members of The Collective Bargaining Committee of the National Licorice Company. On or about September 3 the respondent held a "victory party" at its plant for the benefit of the employees who had returned to work. Beer and other refreshments were served.

[4] Respondent Exhibit No. 10: SEPTEMBER 9, 1937. 264

NATIONAL LICORICE COMPANY,
106 John Street, Brooklyn, N. Y.
Attention: Mr. D. D. Sanford, President

GENTLEMEN: We, the undersigned employees of the National Licorice Company, hereby notify you that we have this day elected a committee of our fellow workers, whose signatures are affixed hereto, as our representatives in collective bargaining with you. We authorize these representatives to enter into and sign a contract with the employer provided it contains substantially the provisions outlined to us by the Management.

You are also notified that the authority given to our fellow workers to represent us in collective bargaining supersedes any authority that any of the undersigned may have given to any other group, organization or individual, and no one except the collective bargaining committee consisting of our fellow workers is authorized to represent us in collective bargaining. 264

Very truly yours,

_____ COMMITTEE.

The Committee sought to bargain with the respondent on September 10, 1937. (It does not appear that any question
644 was raised as to the authenticity of the signatures on the petition nominating the Committee to bargain for the employees.) The Committee asked what could be done in the way of increased wages. The respondent read and explained to them the terms of a form of contract which it is alleged the officers of the Company had prepared. The concessions in the contract were in substance the same as those offered to the employees in the conferences of July 20 and July 29.

The Committee's only requests related to pay for holidays and reduction of the contract terms from 5 to 3 years. The contract, in substance, provided for a 5 per cent increase in
645 pay, entitled the employer to place any of the employees on a piece-work basis, gave employees a 40-hour week, a week's vacation between June 1 and July 20, 1938, and time and one-quarter for overtime, empowered the employer to discharge employees for any reason, regardless of union affiliation, permitted an employee to join any union but precluded him from demanding a closed shop or a signed agreement or striking until July 10, 1940, and prevented solicitation of memberships on company property or time. The contract required the signatures of the respondent, the Committee, and the individual employee. The Committee circulated mimeographed copies of the contract, which were signed in
646 duplicate and returned to the respondent.

On or about September 20, 14 employees, desiring to return to work, met with the Committee in Sanford's office. Frank J. Garone, employed in the plant 8 years, inquired as to whether or not any of the 14 would be placed on the Committee. He was informed that he would have to see Mr. Sanford. When Sanford came into the room, Garone said, "Mr. Sanford, the simple reason is this why we want one

of us to be on that committee, we are afraid we might be left out in the cold. We don't know what is going on in the shop." Sanford replied, "I am sorry, the committee has been picked already. There is enough right now on the committee." This testimony was substantiated by Healey. Subsequently, McGann was asked by Garone to inquire about a raise for him, to which McGann replied, "We can't argue for you." According to Carmela Tesora, Sanford told the 14 returning employees that "he would not protect our jobs and that we would not get that five per cent if we didn't sign." It was stipulated that several other witnesses would testify to the same effect. Tesora further testified that it was her present wish to be represented by the Union.

The evidence discloses that a number of picketers were arrested during the strike, and that charges were dropped with respect to all but two. Carmela Tesora claimed that Healey agreed to drop the charges if she would return to work. She returned to work and the charges were dropped.

B. *Interference, restraint, and coercion.*

Immediately upon receiving the Union's telegram of July 14, the respondent started an active campaign in an effort to induce its employees not to permit an outside union to represent them for the purposes of collective bargaining. The respondent's superintendent unsuccessfully attempted to obtain the appointment of a committee to supersede the Union. The selection by the respondent, on or about July 20, of a committee of the employees, who were to acquaint the employees with an offer from the respondent, failed in its endeavor to discourage membership in the Union. Although continuing to deny the Union recognition, the respondent reluctantly entertained the Union's requests to

negotiate. However, after the strike began, the respondent categorically refused to meet with representatives of the
650 Union. There is evidence that officials, supervisory employees, and armed guards spoke disparagingly of the Union, threatened to close and move the plant, and offered gratuities to the pickets in their efforts to halt the strike and induce the employees to return to work. The respondent encouraged the preparation of and drafted the petition circulated on or about September 9, nominating the Committee to supersede the Union as the collective bargaining agency of the employees. The Committee chosen was dominated by Sanford and used by him to obtain the signatures of the employees to the individual contracts. As a condition of reemployment,
651 the returning employees were required to sign individual contracts. From the foregoing, we must conclude that the officials, supervisory employees, and other agents of the respondent pursued a course of coercion, intimidation, and interference clearly designed to discourage and restrain its employees from affiliation with an outside union.

We find, therefore, that the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

C. Domination of and interference with the Committee; the signing of individual contracts.

652

The respondent assumed an active role in furthering the creation and development of the Committee. Healey advised McGann, obviously inexperienced in labor matters, as to the *modus operandi* of forming the Committee. Sanford dictated the petition which was circulated selecting the Committee. The signatures on the petition were not challenged by the

respondent, and no further proof was demanded of the Committee as to whether it represented a majority of the employees. This action is in marked contrast to the incredulity with which the respondent in the first instance received the claim of the Union that it represented a majority of the employees in the respondent's plant. When Garone sought representation on the Committee for the 14 employees returning to work on September 20, he was informed by McGann that it was a matter for Sanford's determination. When he sought a raise in wages, a member of the Committee referred him to Sanford. It appears conclusively that ultimate control of the activities of the Committee rested with Sanford.

The contract is directly between the respondent and the individual employee, and under it the Committee, as such, has no rights or duties. The Committee actually functioned only for so long as it was necessary to obtain the individual signatures on the contracts. So far as the record shows, its activities ceased thereafter.

The record fails to disclose what demands, if any, were presented by the Committee. The changes which it suggested in the contract proffered by Sanford were relatively of such little consequence that it may be inferred that the Committee was not unreceptive to the respondent's idea of obtaining individual contracts with its employees. The respondent admits that it is a member of the Brooklyn Chamber of Commerce. Healey testified that he thought that the respondent consulted L. L. Balleisen, Industrial Secretary of the Chamber, concerning labor difficulties. It is therefore significant that the respondent should have offered to its employees a contract almost identical in form with contracts emanating from Balleisen and considered by us in a number

of cases heretofore decided.[5] We have held these contracts to be discouraging to membership in a labor organization and invalid. The benefits of the contract under consideration were limited to those employees who signed. In return, the signers relinquished the right to strike and the right to demand a closed shop or signed agreement with any union. They also agreed to accept a procedure not necessarily involving the Union in the settlement of labor disputes, thereby eliminating the Union as a possible agency for collective bargaining.

The actions of the respondent's officials in advising the employees to elect representatives, prepare demands, and meet with the management initiated the organization of the Committee. In exercising its authority over the Committee and directing its activities, the respondent dominated the administration of the Committee.

Upon the basis of the foregoing facts, we find that the respondent, by its officers and agents, sponsored and dominated the formation of the Committee and thereafter dominated its administration and contributed support to it. By these acts and by the limitations on union activity imposed by the individual contracts we further find that the respon-

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[5] See *Matter of Atlas Bag and Burlap Company, Inc.*, 1 N. L. R. B. 292; *Matter of Hopwood Retinning Company, Inc.*, 4 N. L. R. B., No. 113; *Matter of Cating Rope Works, Inc.*, 4 N. L. R. B., No. 125; *Matter of Metropolitan Engineering Company, Inc.*, 4 N. L. R. B., No. 73; *Matter of The Jacobs Bros. Co., Inc.*, 5 N. L. R. B., No. 87; *Matter of Federal Carton Corporation and Printing Pressmen's Union No. 51*, 5 N. L. R. B., No. 118; *Matter of David E. Kennedy, Inc.*, 6 N. L. R. B., No. 111.

dent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

D. *The refusal to bargain collectively.*

1. The appropriate unit.

The complaint alleges that all the respondent's employees engaged in receiving, manufacturing, packing, and distribution of the respondent's products are production employees, supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. This allegation is not denied in the respondent's answer and remains uncontroverted upon the record.

The president of the Union testified that those employees engaged in receiving, manufacturing, packing, and distribution of the respondent's products are production employes, and contends that all production employees, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers, should be included in the appropriate unit. This contention is unopposed by the respondent or the Committee.

We find, therefore, that all the production employees of National Licorice Company, at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers, constitute a unit appropriate for the purposes of collective bargaining, and that such a unit insures to employees the full benefit of their right to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of the majority in the appropriate unit.

62 Although no pay roll was introduced, the undisputed evidence indicates that on or about July 14, 1937, and until the strike on August 2, 1937, there were approximately 135 or 140 employees in the appropriate unit. On the evening of July 14, 1937, 99 employees had signed applications for membership in the Union. By August 3, 1937, this number had been increased to 121. Applications for membership in the Union were received in evidence over the objection of the respondent, who claimed that they had not been properly identified. Landriscina testified that all the applications had
63 been signed in his presence and that he was "familiar with the names of the individuals" signing. The respondent introduced no evidence to substantiate its contention that the signatures were not those of the persons they purported to be, despite the fact that such evidence, if it existed, was available to and within the control of the respondent. On the other hand, it appears that on July 28, 1937, at the conference between the parties at the Regional Office, Sanford admitted that the Union represented a majority of the respondent's employees and agreed to meet with its representatives for the purposes of collective bargaining. Accordingly, under the circumstances, we conclude that the signatures on
64 the application blanks are authentic, and we find that on July 14, 1937, and at all times thereafter the Union was the duly designated representative of a majority of the employees in the appropriate unit. By virtue of Section 9 (a) of the Act it was, therefore, the exclusive representative of all of the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of work.

3. The refusal to bargain.

The respondent admitted that it called the meetings of the employees as a result of the Union's telegram of July 14 and the visit of the Union representatives of July 20. That its attitude toward an outside union was antagonistic is clearly exhibited by the attempts of the respondent's officials to influence the employees to select a bargaining committee within the plant, by their statements that they would not recognize an outside union, by the respondent's failure to respond to the telegram of July 14, and by the summary treatment of the Union representatives in the conference of July 20. When the respondent finally consented to meet with representatives of the Union on July 29, the discussion that ensued was completely dominated by Sanford. The Union officials were to all intents and purposes relegated to the position of bystanders and were permitted scant opportunity to present their demands. Sanford said he would not recognize the Union, but would permit the results of the conference to be conveyed to the employees, who would be required to sign individual contracts of employment. The terms offered were essentially the same as those previously offered to the employees and rejected by them and those incorporated in the individual contracts subsequently signed by the employees. Healey was asked on cross-examination:

> Q. So that on the 29th at the conference and in the conference with the officers themselves had before drawing up this contract, the Company was opposed to setting a signed agreement with any union? A. That is right.

The record shows that the Union attempted to continue negotiations following the conferences of July 29 and August

2, but the respondent resisted all efforts to effect a settlement of the strike and bargain collectively.

The respondent urges, in justification of its refusal to negotiate with the Union after the strike of August 2, that the Union called the strike despite an agreement that it would not call any strikes pending negotiations following the conference of July 29. The evidence fails to establish the contention that such an agreement existed. Furthermore, it is conclusively proven that the Union did not call the strike.

The respondent's allegation that it bargained collectively with the Union either before or after July 29 cannot be sustained upon the record. The Act imposes upon employers the duty not only to meet with the duly designated representative of their employees, but also to recognize and to bargain in good faith with such representative in a genuine attempt to achieve an agreement.[6] At the meeting of July 29, the respondent announced that it did not intend to recognize the Union. It based its subsequent refusals to negotiate upon the specious ground that the Union had called the strike. It sought to eliminate the Union as the collective bargaining agency of its employees by fostering the Committee and imposing individual contracts upon its employees. These facts, considered in conjunction with the respondent's conduct at its meetings with the representatives of the Union, compel the conclusion that the respondent did not recognize or bargain in good faith with the Union. The position of the respondent throughout its dealings with the Union constituted an evasion of its duties under the collective bargaining provisions of the Act. By its conduct it foreclosed any *bona fide* consideration of the various terms

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[6] See *Matter of United States Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B., No. 29.

and conditions of employment which were proposed by the representatives of the Union.

We find that on July 20 and 29, 1937, and thereafter, the respondent refused to recognize and to bargain collectively with the duly designated representatives of a majority of its employees in a unit appropriate for the purposes of collective bargaining in respect to wages, rates of pay, hours of employment, and other conditions of work.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE.

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY.

Since the respondent has engaged in unfair labor practices, we shall order the respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act and restore as nearly as possible the condition that existed prior to the commission of the unfair labor practices.

We have found that the respondent dominated and interfered with the formation and administration of the Committee and contributed support thereto. In order to remedy this unlawful condition the respondent must withdraw all recognition from the Committee as an organization representative of the respondent's employees for the purposes of

dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and
674 other conditions of employment. We will, therefore, order the immediate disestablishment of the Committee as such representative.

We have previously found that the limitations on union activity imposed by the contracts interfered with, restrained, and coerced the respondent's employees in the exercise of their rights to self-organization and collective bargaining. Such contracts are necessarily void as contrary to the provisions of the Act. Moreover, these contracts are void on other grounds, namely, the character of the instrumentality through which they purported to be negotiated and the
675 means by which the signatures of the employees were obtained. The Committee was under the domination of the respondent and was therefore not a proper bargaining representative for its employees. Furthermore, the signatures to the contracts were procured by coercion and intimidation. The respondent must cease to give effect to its contracts with its employees and the Committee.

The respondent urges that the Union is no longer the collective bargaining agent of the employees of the respondent, since by the petition of September 9, 1937, the Union's authority was superseded when the employees designated the Committee as their agent. We find this argument to be
676 without merit. Since the petition was drawn by the Company and circulated at its instance in order to effectuate the illegal acts of the respondent, we find that the petition has no significance as an expression of the employees' choice of an agency for collective bargaining. To give effect to the policies of the Act the Board must disregard the continuing effects of the unfair labor practices and, in restoring the status quo, base its order upon the majority existing on the date of the refusal to bargain.

Upon the basis of the foregoing findings of fact and upon the entire record in this proceeding the Board makes the following:

CONCLUSIONS OF LAW.

1. Bakery and Confectionery Workers International Union of America, Local Union No. 405, and The Collective Bargaining Committee of National Licorice Company are labor organizations within the meaning of Section 2, subdivision (5), of the Act.

2. The respondent by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1), of the Act.

3. The respondent by dominating and interfering with the formation and administration of, and by contributing support to The Collective Bargaining Committee of National Licorice Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (2), of the Act.

4. All the respondent's production employees at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. Bakery and Confectionery Workers International Union of America, Local Union No. 405, was on July 14, 1937,

and at all times thereafter has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

6. By refusing and continuing to refuse to bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its employees in the above-stated unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (5), of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7), of the Act.

ORDER.

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, National Licorice Company, and its agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of The Collective Bargaining Committee of National Licorice Company or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to The Collective Bargaining Committee of National Licorice Company or any other labor organization of its employees;

(b) From recognizing The Collective Bargaining Committee of National Licorice Company as the representative of any of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(c) From giving effect to its contracts with The Collective Bargaining Committee of National Licorice Company and its individual contracts of employment with its employees;

(d) From refusing to bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its production employees at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers;

(e) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from The Collective Bargaining Committee of National Licorice Company as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or con-

ditions of work, and completely disestablish The Collective Bargaining Committee of National Licorice Company as
686 such representative;

(b) Personally inform in writing the members of The Collective Bargaining Committee of National Licorice Company and each of its employees who has signed an individual contract of employment, that such contract constitutes a violation of the National Labor Relations Act and that the respondent is therefore obliged to discontinue such contract as a term or condition of employment; and the employees are released from its obligations and the respondent will no longer demand its performance;

687

(c) Upon request bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its production employees at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any of such matters, embody said understanding in an agreement for a definite term to be agreed upon, if requested to do so by said Union;

688

(d) Immediately post notices to its employees in conspicuous places throughout the respondent's Brooklyn, New York, plant, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating: (1) that the respondent will cease and desist as aforesaid; (2) that The Collective Bargaining Committee of National Licorice Company is disestablished as the rep-

resentative of any of its employees for the purposes of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that the respondent will refrain from recognition thereof; (3) that the individual contracts of employment entered into between the respondent and some of its employees are in violation of the National Labor Relations Act and void and of no effect; and that the respondent will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees;

2689

(e) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

2690

2691

Affidavit as to Service.

District of Columbia, *ss.*:

2692 I, Owen C. Fetters being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 31st day of May, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Kalman Sklar, Esq.
521 Fifth Ave. 69412
New York, N. Y.

2693 Kotzen, Mann & Siegel
51 Chambers St. 69413
New York, N. Y.

William H. Galvin, Esq.
245 West 14th St. 69414
New York, N. Y.

OWEN C. FETTERS

Subscribed and sworn to before me
this 31st day of May, 1938.

HAROLD G. WILSON
2694 Notary Public, District of Columbia
My commission expires May 15, 1941

(Seal)

Affidavit as to Service.

Post Office Department
Official Business

Cancelled Stamp 2695

Registered Article
No. 69412
Insured Parcel
No.....

Return to National Labor Relations Board
(Name of Sender)

Street and Number,
or Post Office Box,

Washington, 2696
D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Kalman Sklar
(Signature or name of addressee)

M. Kennedy
(Signature of addressee's agent) 2697

Date of delivery, June 1, 1938

Affidavit as to Service.

Post Office Department
Official Business

2698 Cancelled Stamp

Registered Article
No. 69413
Insured Parcel
No. .....

Return to National Labor Relations Board
(Name of Sender)
Street and Number,
or Post Office Box,
Washington,
2699 D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Kotzen M. & Siege.
(Signature or name of addressee)

(Illegible)
(Signature of addressee's agent)

Date of delivery, 6/1 1938
2700 Post Office Department
Official Business

Cancelled Stamp

Registered Article
No. 69414
Insured Parcel
No. .....

Return to National Labor Relations Board
(Name of Sender)

Affidavit as to Service.

2701

Street and Number,
or Post Office Box,

Washington,

D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

William A. Galvin
(Signature or name of addressee)

2702

Mebozzone
(Signature of addressee's agent)

Date of delivery. 6/1/38

2703

Order as to Exhibits.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—against—

NATIONAL LICORICE COMPANY,

Respondent.

Upon stipulation of the parties and due consideration having been given it is

ORDERED that in printing the record in the above case none of the exhibits introduced at the hearing before the Board shall be printed, except as follows:

1. Documents included in Board's Exhibit No. 1, as follows: Amended Charge, Complaint, Answer, Notice of Hearing, Motion and Notice of Motion for Bill of Particulars.

2. Board's Exhibit No. 2 and documents included in Board's Exhibit No. 3 as follows: Statement concerning sources of licorice, from Encyclopaedia Britannica, and statement concerning scope of operations of respondent, from Moody's Manual, Industrials.

3. Board's Exhibits Nos. 5, 6, 9, 10, 11, and the following parts of 12: The title and date line; the heading of page 2, column 2, and a passage beginning on page 2, column 2, with the words, "Bro. Wm. Galvin, Business Representative of

the National Biscuit Company, Local 405," and ending with the words, "Local 357 of Niagara Falls, N. Y.", a passage beginning on page 3, column 4, with the words, "From Local 357, Niagara Falls" and ending with the words, "you can't expect the", the continuation of the same passage beginning on page 4, column 1, with the words, "bosses or the N. B. C. to organize your union," and ending with the words, "Frat. Mabel Hickman, Rec. Secretary." 2707

4. Respondent's Exhibits Nos. 1, 2 and 6 and Respondent's Exhibit No. 10, with explanation as to signatures of individual employees. The signatures will be omitted.

AND IT IS FURTHER ORDERED that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties, and that either party shall have the right to have any of the said exhibits printed and included in the printed record in the event that an appeal is later taken. 2708

Dated, September 26, 1938.

MARTIN T. MANTON,
For the Court.

2709

Stipulation as to Exhibits.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—*against*—

NATIONAL LICORICE COMPANY,

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the above named parties that in printing the record of the above case, none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

1. Documents included in Board's Exhibit No. 1, as follows: Amended Charge, Complaint, Answer, Notice of Hearing, Motion and Notice of Motion for Bill of Particulars.

2. Board's Exhibit No. 2 and documents included in Board's Exhibit No. 3 as follows: Statement concerning sources of licorice, from Encyclopaedia Britannica and statement concerning scope of operations of respondent, from Moody's Manual, Industrials.

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ning on page 3, column 4, with the words, "From Local 357, Niagara Falls" and ending with the words, "you can't expect the", the continuation of the same passage beginning on page 4, column 1, with the words, "bosses or the N. B. C. to organize your union", and ending with the words, "Frat. Mabel Hickman, Rec. Secretary."

4. Respondent's Exhibits Nos. 1, 2 and 6 and Respondent's Exhibit No. 10, with explanation as to signatures of individual employees. The signatures will be omitted.

AND IT IS FURTHER ORDERED AND AGREED that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties, and that either party shall have the right to have any of the said exhibits printed and included in the printed record in the event that an appeal is later taken.

Dated, at Washington, D. C., this 17th day of September, 1938.

ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations Board.

Dated, at New York City, this 22nd day of September, 1938.

KOTZEN, MANN & SIEGEL,
by ABRAHAM MANN,
Attorneys for Respondent.

Opinion, Circuit Court of Appeals.

2719

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

No. 229—October Term, 1938.

Argued March 6, 1939. Decided June 12, 1939.

Appeal from the National Labor Relations Board.

Before—L. HAND, CHASE and PATTERSON, *Circuit Judges.*

NATIONAL LABOR RELATIONS BOARD, Petitioner,

2720

—against—

NATIONAL LICORICE COMPANY, Respondent.

On petition by the National Labor Relations Board, under § 10(c) of the National Labor Relations Act, 29 U. S. C. A. § 160(c), for an order enforcing its order to "cease and desist", entered May 31, 1938.

2721

DAVID A. MORSE, for Petitioner.

ABRAHAM MANN, of New York City, for respondent.

L. HAND, *Circuit Judge.*

This case comes up upon a petition by the National Labor Relations Board for an order, enforcing its order, entered against the respondent on May 31, 1938, after a hearing upon a complaint under the National Labor Relations Act, 29 U. S. C. A. § 151 et seq. The respondent is a company engaged in interstate commerce, and therefore subject to the jurisdiction of the Board: the unfair labor

2722 practices found against it were that it had refused to bargain with the Bakery & Confectioners National Union which represented a majority of its workmen; that it had interfered with, and coerced, them, while acting through that union; and that it had fostered and dominated a company union—the Collective Bargaining Committee of National Licorice Co.—through which it made unlawful contracts with its workmen, unduly restricting their rights secured by the statute. The upshot of the order was that the respondent should withdraw recognition from the company union, that it should inform its workmen, who had signed the contracts, that they were unlawful, and that it should bargain with the Bakery & Confectioners Workers Union.

2723 The respondent raised two objections: (1) that the evidence did not sustain the Board's findings and conclusions; and (2) that if it did, the Board never acquired jurisdiction to deal with the company union or its contracts.

We begin with a narrative of those findings which we think had substantial evidence to support them. The respondent had 140 workmen and workwomen, from whom the union had secured 99 signed applications by July 14th: although not yet accepted by the union, each application designated it as the applicant's bargaining agent meanwhile. So armed, Galvin, the union's president, wired the company on the evening of the 14th, asking for a con-

2724 ference. Sandford, the company's president, at once called a conference of the men, and urged that they do not avail themselves of any "outside union", which he said he would not recognize if formed. He suggested that they should choose a committee of their own, adding, however, that he had no objection to their joining a union, and that he would not discriminate against them if they did. On the 20th Galvin and another officer of the Union conferred with Sandford, presenting to him a proposed contract. Galvin had 109 signed applications at this conference, but he refused to show them to Sandford, giving as a reason that he feared the disclosure of the names might prejudice the company against the signers. Sandford answered that it

made no difference, as he could not tell from the applications whether the men had in fact signed them. Nevertheless, Galvin then offered to let him see them, provided that, if he could prove that they made up a majority, he would bargain with the union. This Sandford refused, and the conference ended inconclusively. Sandford had an interview that afternoon with some of the men, in which he offered a five per cent wage increase and one month's vacation. This he asked them to pass on to the others and bring back their answer. Healey, a superintendent, then selected some workmen to get a petition signed, nominating a committee to take the place of the union, but this proved abortive. Another meeting took place on the afternoon of the 29th at which Galvin, Anderson—the union's vice-president—its attorney, and another officer were present, and in which the union's demands were discussed, among which were a closed shop, a change in the wage schedule and a notice to the union with opportunity to be heard, in the case of all discharges. Sandford spoke from a prepared statement, refused the demands, and made a counter proposal in substantially the same terms as those of July 20th. He declared that he would not deal with the union, but would make individual contracts with the men, the union's functions being properly limited to passing on to them the result of any conferences, in order that they might individually sign. The conference went over to August fifth, and on the second the men struck. Anderson swore that the union had nothing to do with calling this strike, and the Board so found. Apparently, the workmen remained in the factory for four hours, and finally had to be ejected by the police; but as the Board's order does not require any reinstatement, we disregard this feature of the dispute, though the strike does seem to have been a short "sit down". Sandford refused to have any further dealings with the union after this, and there was some evidence that while the strike was on, he sent agents among the strikers to persuade them to come back, and dissuade them from further dealing with the union. By the

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2728 25th enough did come back to start work, and by September 20th, substantially all were reemployed. The origin of the company union dated from August 27th when, according to Healey, one McCann, a workman, saw him secretly, said that he was "fed up with the union", and asked whether the men could not have their own bargaining committee. Healey said yes, provided they could get a majority. By September 9th McCann told Healey that they had elected a committee, and asked him for advice how to proceed. Healey refused to give any advice, but recommended them to Sandford, who prepared the "designation" of a committee for collective bargaining. By the 10th, McCann had secured 109 signatures to this, and gave them
2729 to Sandford, who at once began to treat with the committee so constituted. A contract for three years was concluded that day for the same advance in wages that Sandford had proposed on July 29th, but providing that the men should not demand a closed shop, or a signed agreement with any union; and that the company had the unconditional right to discharge any of them for any reason, "regardless of his or their affiliation or non-affiliation with any union", though it would not do so for any "legitimate union activities conducted outside of company time or company property, or because of any affiliation with the union". All the men who had then returned to work signed such
2730 contracts severally; and the others did so as they returned. Among these one, Garone, who with thirteen others interviewed the committee in Sandford's office, asked whether they could have one of their number as a member. The committee answered they would have to see Sandford, and when Sandford reentered the room, he said they could not have a member, because the committee had been already picked and was large enough.

From the foregoing it appears that Sandford, though willing to deal with the union as the representative of those of his men who were members, was not willing to treat it as a representative of all. Indeed, it is doubtful whether the negotiations on July 29th were bona fide at all, or were

undertaken as more than a disguise for a refusal to treat. 2731
We need not, however, decide that question, because in any event Sandford denied to the union rights secured by statute. In so far therefore as the order compelled the respondent to deal with the union (paragraphs I(d) and II(c)) it was justified as of July and August, 1937. The evidence as to Sandford's domination over the company union is (as was almost inevitable, considering the time and manner of formation) somewhat inconclusive. The strike had failed, and it might well be that the men were "fed up" with the old union; a genuine company union was at least a possible outcome. We think, however, that there was enough to justify the Board that the union 2732
actually formed was not a free organization. The contract alone showed that the company was exacting unlawful concessions from it. It is indeed lawful for a union to agree to an open shop; but it is another thing to agree not to propose changing to a closed shop for the period of the agreement, and the word, "demand", covered a proposal. The same is true of the stipulation not to "demand" a signed agreement. A party to a contract does not break it, when he proposes to the other party that conditions have so far changed as to make desirable a change of the contract. There is nothing unlawful in that so long as it is not a masque for threatening to violate the existing contract. Perhaps in labor disputes it ordinarily will be, but 2733
the right to propose the change is secured by statute as part of the right to negotiate. The stipulation that the discharge of a workman should not be an occasion "for arbitration, or mediation, and that any action of reinstatement, if any, will be taken voluntarily by the Employer", is somewhat ambiguous. It may perhaps be read as not meant to forbid negotiations regarding discharges, but only to eliminate the remedies mentioned. Even so, "mediation" is close to "negotiation", and the preceding declaration that a discharged workman may put his case personally before the company, suggests that the company union shall not act for him. These facts added to Sandford's insistence

2734 that each employee sign the contract, and his assuming to decide the proper size of the committee—following as they did upon a collapse of the strike, and taken in connection with Sandford's pressure on his men on July 14th and 20th—were enough to support those paragraphs of the order which required the respondent not to treat the company union as the representative of the employees (I(a), I(b), I(c); II(a) and II(b)). The situation was clearly within *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 58 S. Ct. 571, 82 L. Ed. 831, 115 A. L. R. 307, and not within *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 231-239, 59 S. Ct. 206, 83 L. Ed.—, and the company union
2735 could be displaced without being made a party.

This leaves only paragraphs I(d), I(e), II(c), II(d) and II(e), of the order. Paragraphs I(e), II(d), and II(e) we will not disturb, but I(d) and II(c) seem to us to require some modification. The finding of the Board that the union represented the respondent's workmen, necessarily related to July, 1937; at which time, the union had only just organized the shop. The strike followed in two weeks and failed, and then came the company union: we know nothing more. It is now nearly two years after the tentative organization of the factory, for it was really only tentative, the applicants not having yet been
2736 accepted; and our order will be conditional upon the Board's ascertaining by a new election whether the union is now the choice of the majority; otherwise there is some chance that it may not represent their present wishes. In *National Labor Relations Board* v. *Remington Rand, Inc.*, 2 Cir. 94 F. 2d 862, 869, we held that the "Joint Board" had a continued presumptive authority which the employer must overcome by evidence, but in that case the union had been established for a year before the trouble arose. Here there is no ground for such a presumption. Moreover, the workmen are few, and an election will not be an onerous condition.

The respondent complains that the Board's order was 2737
jurisdictionally unsupported because the "charge" on which the complaint issued, and the complaint itself, contained nothing about the formation of the company union, or the individual contracts of the respondent with the men. We have held that a "charge" is a condition precedent upon the Board's power to issue a complaint (*National Labor Relations Board* v. *Hopwood Retinning Co.*, 2 Cir. 98 F. 2d 97) but we need not consider here how far it confines the proceeding to matters then existing, but not included. For here no "charge" could have included the company union and it was not necessary that it should. The original controversy had resulted in a strike; the strike had failed; 2738
the company union followed on the failure; and the Board was within its powers in treating the whole sequence as one, and in reestablishing the workmen's freedom, by ending the company union's privilege to represent them.

An enforcement order may enter in accordance with the foregoing.

2739

Order of Enforcement.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

October Term, 1937.

Present—HONORABLE LEARNED HAND,
HONORABLE HARRIE BRIGHAM CHASE,
HONORABLE ROBERT P. PATTERSON, *Circuit Judges.*

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—against—

2741

NATIONAL LICORICE COMPANY,

Respondent.

ORDER ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, AS MODIFIED. FILED JULY 6, 1939.

The National Labor Relations Board having issued an order against National Licorice Company on May 31, 1938; the Board having petitioned this Court for enforcement of said order; this Court having considered the same and having on June 12, 1939, issued its decision modifying said
2742 order of the Board and providing for entry of an order enforcing said order of the Board as modified; it is hereby

ORDERED, ADJUDGED, AND DECREED that National Licorice Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of The Collective Bargaining Committee of National Licorice Company or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to The Collective Bargaining Committee of National Licorice Company or any other labor organization of its employees;

(b) From recognizing The Collective Bargaining Committee of National Licorice Company as the representative of any of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; 2743

(c) From giving effect to its contracts with The Collective Bargaining Committee of National Licorice Company and its individual contracts of employment with its employees;

(d) From refusing to bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its production employees at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory and office employees, salesmen, and truck drivers, subject to the limitations of paragraph 2 (c) of this Order; 2744

(e) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

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2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from The Collective Bargaining Committee of National Licorice Company as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and completely disestablish The Collective Bargaining Committee of National Licorice Company as such representative;

(b) Personally inform in writing the members of The

2746 Collective Bargaining Committee of National Licorice Company and each of its employees who has signed an individual contract of employment, that such contract constitutes a violation of the National Labor Relations Act and that the respondent is therefore obliged to discontinue such contract as a term or condition of employment; and the employees are released from its obligations and the respondent will no longer demand its performance;

(c) Upon request bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its production employees at its Brooklyn, New York, plant, in-
2747 cluding working foremen, but excluding executive, supervisory and office employees, salesmen and truck drivers, in respect to rates of pay, wages, hours of employment, and other conditions of employment, in the event that hereafter in a proceeding under Section 9 (c) of the National Labor Relations Act the said Union is certified by the Board as such representative following an election, and, if an understanding is reached on any of such matters, embody said understanding in an agreement for a definite term to be agreed upon, if requested to do so by said Union;

(d) Immediately post notices to its employees in conspicuous places throughout the respondent's Brooklyn, New
2748 York, plant, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating: (1) that the respondent will cease and desist as aforesaid; (2) that The Collective Bargaining Committee of Nat al Licorice Company is disestablished as the representativ of any of its employees for the purposes of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and that the respondent will refrain from recognition thereof; (3) that the individual contracts of employment entered into between the respondent and some of its employees are in violation of the National Labor Relations Act and void and of no effect; and that the re-

spondent will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees; 2749

(e) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

LEARNED HAND,
Judge, United States Circuit Court of Appeals for the Second Circuit.

H. MARIE B. CHASE,
Judge, United States Circuit Court of Appeals for the Second Circuit. 2750

ROBERT P. PATTERSON,
Judge, United States Circuit Court of Appeals for the Second Circuit.

Dated: July 6, 1939.

(Back)

NATIONAL LABOR RELATIONS BOARD 2751

—against—

NATIONAL LICORICE COMPANY.

ORDER.

United States Circuit Court of Appeals
Second Circuit

Filed July 6, 1939

D. E. Roberts, Clerk

Clerk's Certificate.

2752

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK.

I, D. E. ROBERTS, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages numbered from 1 to 914, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

2753 —against—

NATIONAL LICORICE COMPANY,

Respondent.

as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 21st day of July, in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the said United States the one hundred and sixty-fourth.

2754

D. E. ROBERTS,
Clerk.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

FILE COPY

Office - Supreme Court, U. S.
FILED
AUG 7 1939
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1939.

No. 272

NATIONAL LICORICE COMPANY,

Petitioner,

—against—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

ABRAHAM MANN,
EDWARD M. LADDEN,
Counsel for Petitioner.

THE COURT PRESS, N. Y. C.

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IN THE

Supreme Court of the United States

October Term, 1939.

No.

NATIONAL LICORICE COMPANY,

Petitioner,

—against—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

National Licorice Company, the petitioner herein, respectfully prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals, for the Second Circuit (R. 914), entered in the above cause on July 6th, 1939, upon its decision (R. 907) rendered June 12th, 1939, modifying and enforcing as so modified the order of the National Labor Relations Board made against petitioner herein.

A.

STATEMENT OF THE MATTER INVOLVED.

Petitioner is a New York corporation engaged in the manufacture and sale of licorice and related products. On August 2nd, 1937, proceedings against petitioner were instituted under the National Labor Relations Act (Act of July 5th, 1935, c. 372, 49 Stat. 449,

29 U. S. C. A. Secs. 151, *et seq.*) through the filing of a sworn charge under Section 10(b) of said Act by Bakery & Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity, charging petitioner with the commission of unfair labor practices under Section 8, subsections (1), (2) and (5) of said Act (R. 772). On October 7th, 1937, the National Labor Relations Board issued its complaint and notice of hearing (R. 774-782), to which petitioner filed an answer (R. 790-798). The hearing was held before the Trial Examiner who filed his Intermediate Report (R. 804-828), to which petitioner filed exceptions (R. 829-836), and thereafter, on May 31st, 1938, the Board rendered its Decision and Order (R. 867-897) finding petitioner guilty of unfair labor practices under Section 8, subsections (1), (2) and (5) of the Act, and directing it to cease and desist from engaging in certain alleged practices and to take certain affirmative action which the Board found would effectuate the policies of the Act (R. 894-897).

Thereafter, the Board petitioned the Circuit Court of Appeals, for the Second Circuit, for enforcement of its Order pursuant to Section 10(e) of the Act, and after hearing argument, the Circuit Court rendered its decision (R. 907) modifying the Board's Order in one respect and enforcing the remainder thereof.

The essential facts are as follows: The petitioner employed approximately 140 employees at its Brooklyn plant during the period in which this controversy arose. On August 2nd, 1937, the employees went out on a strike which lasted until August 25th, 1937, during which interval petitioner stopped all operations (R. 338). There was evidence submitted at the hearing that many employees, not being in sympathy with the

strike, tried to resign from the union and return to work, but were fearful of violence at the hands of the union (R. 521-524). On August 25th, 1937, the plant reopened and the employees gradually returned to work until by September 20th, 1937, all employees, with the exception of two who never applied for their jobs (R. 340, 568), were taken back regardless of their union membership or union activities (R. 568).

On August 27th, 1937, Walter J. Healey, petitioner's assistant secretary, was requested by a group of employees to confer with them at the Y. M. C. A. (R. 525). He did so and was informed that the employees were resentful of the treatment accorded them by the union, were desirous of giving up the strike, returning to work and forming their own bargaining organization (R. 526). Healey replied that their jobs were open to them but that before the company could deal with any representatives of employees, such representatives must obtain "the authorization of 51%" (R. 527).

On September 9th, 1937, Healey was informed by the employees that they had elected, from among their number, a bargaining committee of eight persons who desired to present some requests to the company officials (R. 577). Petitioner had taken no part whatever in the formation or selection of this committee which was created solely by the employees themselves, without suggestion, instigation or influence of the management (R. 579).

Petitioner, however, refused to deal with this committee unless it could supply written proof that it duly represented the employees (R. 576; 725). Bill McCann, one of the committee members, asked Healey for assistance in drawing up such a letter or form. He was referred to Mr. Sanford, petitioner's presi-

dent, who, on September 9th, 1937, prepared a form of petition for the use of the employees, which, when executed by a majority, would constitute the written proof of authorization insisted upon by petitioner (R. 576).

On September 10th, 1937, the petition which had been drawn by Sanford at McCann's request, was presented to the company's officials, said document being signed by the eight members of the committee and by 118 of the 140 employees; constituting over 85% of all (R. 579-580). At the hearing conducted by the Board this petition was admitted into evidence without objection as Respondent's Exhibit 10 (R. 866a), and because of its importance to the questions of law involved in this proceeding, is set forth below in full, except that signatures are omitted.

"September 9, 1937.

National Licorice Company,
106 John Street, Brooklyn, N. Y.

Attention: Mr. D. D. Sanford, President

Gentlemen: We, the undersigned employees of the National Licorice Company, hereby notify you that we have this day elected a committee of our fellow workers, whose signatures are affixed hereto, as our representatives in collective bargaining with you. We authorize these representatives to enter into and sign a contract with the employer provided it contains substantially the provisions outlined to us by the Management.

You are also notified that the authority given to our fellow workers to represent us in collective bargaining supersedes any authority that any of the undersigned may have given to any other group, organization or individual, and no one

except the collective bargaining committee consisting of our fellow workers is authorized to represent us in collective bargaining.

Very truly yours,"

On the same day, September 10th, 1937, the committee, on its own volition, appeared at petitioner's office and conferred with the company's officials for two hours (R. 697) on the terms of the proposed contract. The committee, on behalf of all the employees, requested an increase of wages (R. 581), pay for all holidays (R. 583), establishment of piece-work rates high enough to equal hourly rate earnings (R. 706) and the reduction of the hours of firemen and maintenance men from 54 to 44 (R. 708).

After discussion (R. 583), the committee accepted petitioner's offer of a 5% increase of wages, one week's vacation with pay (R. 582), a reduction of the hours of firemen and maintenance men (R. 708), and the adjustment of piece-work rates and overtime rates (R. 706). The term of the proposed contract was settled at three years (R. 584).

The wage scale, reflecting the 5% increase, was inserted in the contract (R. 852) and such wage scale could not be reduced by the employer until July 10th, 1938, although it could be voluntarily increased before that time (R. 855). If changes in hours, wages, vacations or working facilities for the year ensuing after July 10th, 1938 could not be satisfactorily settled, disputes on these points were to be submitted to arbitration (R. 856). Strikes and lockouts were prohibited by the contract (R. 854).

After all differences had been settled, the contract was executed by petitioner with the Committee and with each individual employee who wished to become a party thereto, petitioner making it clear to em-

ployees that signing was entirely optional and that continuation of employment was not predicated upon signing the contract (R. 585).

The contracts were distributed to the employees by the Committee, supervisory employees being admonished not to participate under pain of dismissal (R. 588, 589). A large number of contracts, one of which is printed in the record (R. 850-857), were thereupon executed in accordance with the foregoing, but the exact number executed does not appear.

At the hearing, the Board did not produce a single witness to give evidence as to the manner or method in which the employees appended their signatures to the petition of September 9th, 1937 in evidence as Respondent's Exhibit 10 (R. 866a), pursuant to which the employees had repudiated the union as their bargaining agent and substituted in its place their own Committee of eight fellow workers, nor did it produce a single member of that Committee. Out of petitioner's entire employee body, the Board produced only two witnesses who gave some testimony on the subject of the contracts and each witness testified that they had signed voluntarily and without coercion (R. 376; 766; 380-381).

The reason for the lack of any evidence or testimony on this subject is evident. In view of the fact that at the hearing counsel for the union conceded that the charge filed against petitioner did not apply to these contracts (R. 380), and counsel for the Board also conceded that the complaint did not embody them (R. 381), the proceedings were conducted by all parties on the theory that the contracts were not in issue, and that no necessity existed to adduce evidence in respect thereto.

To the proceedings instituted by the Board, only

petitioner was made a party respondent. Neither the Committee nor any one of the numerous employees holding individual contracts with petitioner were given notice of the proceedings or named as parties or served with any charge, summons, notice, complaint or other process, or granted any opportunity to be heard on matters affecting their interests. Not being parties and not receiving any notice whatever, the Committee and the employees took no part in the hearings before the Trial Examiner which were conducted *ex parte* as to them in every respect.

On May 31st, 1938 the Board issued its Decision (R. 867-894) and Order (R. 894-897), whereby petitioner was directed, in substance, to cease and desist from dominating or interfering with the Committee, from giving effect to the contracts, and from refusing to bargain collectively with the union; to affirmatively withdraw recognition from and completely disestablish said Committee; to inform each member thereof, and each of its employees who have signed contracts, that said contracts constituted violations of the National Labor Relations Act and must be, in effect, cancelled; to bargain with the union, and if an understanding is reached, to embody said understanding in an agreement for a definite term upon the union's request, and to post notices in conformity with the foregoing.

In the enforcement proceedings the Circuit Court of Appeals for the Second Circuit rendered a decision (R. 907) and entered an order (R. 914), enforcing the Board's order in all respects against petitioner, except that the requirement of bargaining with the union was conditioned upon the result of an election to be conducted by the Board to determine whether the union was still the representative of the employees.

B.

Jurisdiction.

The jurisdiction of this Court to review the decree in question is based upon Section 240(a) of the Judicial Code, as amended by the Act of February 13th, 1925, c. 229, sec. 1, 43 Stat. 938 (28 U. S. C. A. Sec. 347(a)) and Section 10(e) of the National Labor Relations Act of July 5th, 1935, c. 372, sec. 10, 49 Stat. 453 (29 U. S. C. A. 160(e)) and Section 5, subdivision (b) of Rule 38 of the Revised Rules of this Court.

The decision of the Circuit Court of Appeals for the Second Circuit was rendered June 12th, 1939 (R. 907) and its decree thereon was filed July 6th, 1939 (R. 914).

C.

Questions Presented.

1. Were petitioner's employees necessary parties to, and entitled to notice of the proceedings abrogating and annulling their individual contracts of employment with petitioner?

2. Was the Collective Bargaining Committee of the National Licorice Company, a party to such contracts with petitioner, likewise entitled to notice of said proceedings and the right to be heard thereon?

3. Is the National Labor Relations Board, as an administrative agency of the United States, bound by the statements made upon the hearing by the attorneys for the union and the Board respectively, that

the charge filed against petitioner did not apply to these contracts and that the complaint did not embody them, or could the Board repudiate such statements of counsel and cancel the contracts notwithstanding?

4. Does the National Labor Relations Act confer upon the Board the power, either express or implied, to cancel and destroy an individual contract of employment?

(a) If the Board has such power over individual contracts of employment, may it be exercised despite the fact that in this case not a single employee whose contract was rescinded has requested such result, given his consent thereto, tendered back the benefits received, or even testified on that subject?

(b) Did the Board, in cancelling the contracts in this case, deprive petitioner and its employees of property without due process of law within the meaning of the Fifth Amendment?

5. Can a contract between employer and employee be said to be "in violation of the National Labor Relations Act" or "unlawful", as the Board and the Court below characterized the contracts in this case, when the Act contains no provisions which affect or restrict, in the slightest degree, the common law rights of persons to contract for the sale of their labor on whatever terms they may voluntarily choose, and this Court, in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, 57 S. Ct. 615, 628, interpreted said Act as not precluding such individual contracts as an employer might elect to make directly with individual employees or from hiring individuals on whatever terms he may, by unilateral action, determine?

6. Are the terms of the contracts in violation of the National Labor Relations Act?

7. Is the jurisdiction of the Board limited to the hearing and determination of such unfair labor practices which are embodied within a charge, as provided by Section 10(b) of the Act and Article II, Sections 1, 2, 3, 4, 5 and 9 of the Rules and Regulations of the Board, Series 1, as amended, or does the Board have power to conduct a hearing and make an order respecting matters not included in the charge?

8. Whether the Board made findings on substantial evidence when it gave no heed or effect to the written petition of a large majority of the workers revoking the authority of the union to represent them and designating their own Committee, when there is no proof whatever in the record impeaching the petition in the slightest degree or of even an attempt to challenge its authenticity or validity?

9. Whether the Circuit Court of Appeals made a proper order in directing the Board to conduct an election to determine whether the union still represented a majority of petitioner's employees?

D.

Reasons Relied on for the Allowance of the Writ.

1. The Court below, by giving judicial approval to the proposition that the Board possesses the requisite authority to cancel employment agreements, and in holding that the Committee and the employees, despite their valuable and beneficial interests in the contracts, were not entitled to notice or hearing, has

decided a federal question in a way in conflict with the decision of this Court in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 59 S. Ct. 206, 218.

2. The decision rendered by the Court below to the effect that the individual contracts were unlawful is in conflict with decisions of other circuit courts of appeal, and is in conflict with decisions of this Court, rendered in the following cases:

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615;

Consolidated Edison Company v. *National Labor Relations Board*, 305 U. S. 197, 59 S. Ct. 206;

National Labor Relations Board v. *Delaware-New Jersey Ferry Co.*, 90 Fed. (2d) 520 (C. C. A. 3rd), certiorari denied Nov. 8, 1937;

National Labor Relations Board v. *The Sands Mfg. Co.*, 96 Fed. (2d) 721 (C. C. A. 6th).

3. The Court below, in deciding that the Board has authority to conduct the hearing and make an order with respect to matters not included within the charge, despite the provisions of Section 10(b) of the Act and Article II, Sections 1, 2, 3, 4, 5 and 9 of the Regulations, has decided an important question of federal law which has not been, but should be settled by this Court. Furthermore, the decision of the Court below on this point is squarely in conflict with a decision on the identical point announced in the case of *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.*, 98 Fed. (2d) 97 (C. C.

A. 2nd), which held that the Board's complaint and the hearing must be in accord with the charge and that the Board cannot use its own initiative in respect to charging unfair labor practices. The conflict between these two decisions relating to the extent of the Board's jurisdiction has produced a state of confusion which should be settled by this Court.

4. The Court below has so far sanctioned a departure by the Board from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, in that said Circuit Court:

(a) Permitted the Board to disregard and avoid the binding effect of the attorneys' stipulations that the contracts were not in issue.

(b) Permitted the Board to cancel contracts when neither the Committee nor any of the employee parties thereto, excepting two, appeared or testified and there is no evidence whatever in the record as to the employees' desires in the matter.

(c) Permitted the Board to avoid the binding and conclusive legal effect of a written petition signed by over 85% of the employees, received without objection as an exhibit in evidence, pursuant to which the union was ousted and a new bargaining representative selected.

5. The questions presented for determination in this cause are of importance in the administration of the National Labor Relations Act, and are of particular importance to employers and employees throughout the United States.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complet transcript of the record and of all proceedings in this cause, entitled "National Labor Relations Board, Petitioner v. National Licorice Company, Respondent", and that said decree of the Circuit Court of Appeals be reversed by this Honorable Court, and that your petitioner have such other and further relief in the premises as to this Court may seem just and proper.

Dated, August 5th, 1939.

NATIONAL LICORICE COMPANY,
Petitioner.

ABRAHAM MANN,
EDWARD M. LADDEN,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions Below.

The opinion of the United States Circuit Court of Appeals for the Second Circuit is reported in 104 Fed. (2nd) 655. It was filed June 12th, 1939, and an order or decree thereon was entered July 6th, 1939. The opinion and order are printed at pages 907 to 917 of the record.

The decision, findings of fact and conclusions of law of the National Labor Relations Board are printed at pages 867 to 894 of the record and its order is printed at pages 894 to 897. Said decision, order, etc., is reported in 7 N. L. R. B. 73.

II.

Jurisdiction.

Petitioner seeks a review by writ of certiorari pursuant to Section 240(a) of the Judicial Code, as amended by the Act of February 13th, 1925, c. 229, Sec. 1, 43 Stat. 938 (U. S. C. Tit. 28, Sec. 347(a)) and Section 10(e) of the National Labor Relations Act of July 5th, 1935, c. 372, Sec. 10, 49 Stat. 453 (U. S. C. Tit. 29, Sec. 160(e)). The date of the decree sought to be reviewed is July 6th, 1939 (R. 914), and the date of the decision is June 12th, 1939 (R. 907). It was rendered by the United States Circuit Court of Appeals for the Second Circuit in a proceeding instituted therein by the National Labor Relations

Board, pursuant to Section 10(e) of the National Labor Relations Act, for enforcement of its order made against the National Licorice Company.

III.

Statement of the Case.

A full statement of the case has been given under heading A in the petition for the writ of certiorari, and for the sake of brevity is not repeated here.

IV.

Specification of Errors.

The Circuit Court of Appeals erred:

(1) In not finding and holding that the Committee and each of the employees whose contracts were destroyed by the Board's order were necessary and indispensable parties to, and were entitled to notice of the proceedings and the right to be heard thereon.

(2) In not finding and holding that the Board lacked power or authority to cancel individual contracts of employment, and that under the circumstances existing in this case a cancellation would result in petitioner, its employees, and the Committee being deprived of property without due process of law.

(3) In holding that "the situation was clearly within *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 58 S. Ct. 571, 82 L. Ed. 831, 115 A. L. R. 307, and not within *Consolidated Edison Co.* v. *National Labor Relations*

Board, 305 U. S. 197, 231-239, 59 S. Ct. 206, 83 L. Ed. * * *."

(4) In holding that petitioner, through the contract, was "exacting unlawful concessions" from the Committee.

(5) In not finding and holding that the statement and concession of the attorneys for the Board and the union, made at the hearing to the effect that the contracts were not in issue, was binding upon the Board so as to preclude it from making any order or adjudication respecting such contracts.

(6) In refusing to find and hold that the jurisdiction of the Board is limited to the hearing and determination only of such unfair labor practices that are alleged in a charge, and that the Board cannot adjudicate with respect to matters not so charged.

(7) In failing to find and hold that the Board's order was not based upon substantial evidence and that said order was, in all respects, improper and unlawful.

(8) In ordering the Board to conduct an election to ascertain whether the union still represents the men, in view of the uncontroverted evidence in the record that such union, as far back as September 9th, 1937, was repudiated by the workers and its authority as bargaining agent revoked by the written instrument in evidence as Respondent's Exhibit 10 (R. 866a).

V.

Argument.

POINT I.

There is a conflict between Circuit Court decisions as to the extent of the Board's jurisdiction over matters not included within a charge filed under Section 10(b) of the Act; an important question is thus presented which should be settled by this Court.

Section 10(b) of the Act provides in part as follows:

> "*Whenever it is charged* that any person is engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint *stating the charges in that respect*, * * *." (Italics ours.)

Under the Rules and Regulations of the Board, Series 1, as amended, in Article II, Section 1, it is provided, in substance, that a charge of unfair labor practices may be made by any person or labor organization; such charge may be withdrawn only with the consent of the Regional Director with whom it was filed or of the Board, and upon the withdrawal of any charge the Regional Director shall dismiss any complaint based thereon. Section 2 provides that the charge shall be filed in the Region where the alleged unfair labor practice has occurred or is occurring. Section 3 provides that the charge must be in writing, the original being signed and sworn to, and that there shall be three additional copies of such charge filed. Section 4 provides that the charge shall contain the name and address of the person or labor organization

making the charge, the name and address of the respondent, and a clear and concise statement of the facts constituting the alleged unfair labor practice. Section 5 states that after a charge has been filed, if it appears proper to the Regional Director, he shall issue a formal complaint in the name of the Board *stating the charges,* together with a notice of hearing, *and that a copy of the charge shall be annexed to the complaint.* Section 9 provides that if, after the filing of a charge, the Regional Director declines to issue a complaint, such action may be reviewed by the Board in Washington.

The full text of the Regulations referred to is set forth in the appendix.

Construing Section 10(b) of the Act and the Regulations, the Circuit Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Hopwood Retinning Co. Inc.,* 98 Fed. (2d) 97, 101, held:

> "This procedure is required as a prerequisite to the jurisdiction of the Board, and the complaint issued and the subsequent hearing must be in accord with the charge in an attempt to prove or rebut such charges. The Board should be an impartial administrator and must ascertain if there were unfair labor practices as charged. The Board cannot use its own initiative in respect to charging unfair labor practices."

It would appear from the foregoing that the foundation of every proceeding before the Board is the charge, and that the Board's complaint, the hearing thereafter held, and any order thereafter issued, cannot expand or enlarge the charge, but such complaint, hearing and order are limited and confined to the matters alleged in the charge. If the proceedings go beyond the matters charged, they are necessarily void, to such extent.

In the present proceeding the amended charge was sworn to on August 2nd, 1937 (R. 772). Presumably, it was filed the same day, which the Board has never denied. No other, further or additional charges have ever been filed herein. It is conceded that the collective bargaining Committee was organized on September 9th, 1937, and that the contracts were not negotiated until September 10th, 1937 (Board's Decision (R. 881-882)). Obviously, the charge of August 2nd, 1937 could not and did not include matters that occurred in the future.* Petitioner claimed that the cancellation of the contracts and the disruption of the Committee, after the close of the hearings, was unlawful and improper for lack of jurisdiction, and was the result of action taken in disregard of the pronouncement of the Chief Justice in the case of *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 47, 57 S. Ct. 615, 629, that "the Act establishes standards to which the Board must conform."

The decision of the Court below in overruling petitioner's contentions on this point, stated that here no charge could have included the "company union" *and it was not necessary that it should* (R. 913), thereby causing an irreconcilable conflict with the decision in the *Hopwood* case cited above. Hence, on an extremely important aspect of the Board's jurisdiction there now exists uncertainty and confusion to a marked degree. The question presented has never been passed upon by this Court, and should now be authoritatively settled by it.

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*The reference in the charge of August 2nd, 1937 to individual contracts and to committees, according to the evidence, related only to a purported attempt in July, 1937 to form a committee and negotiate contracts, which, however, never materialized and the Board made no order with respect thereto.

POINT II.

The decision of the Court below that neither the Committee nor petitioner's employees were entitled to notice and hearing of the proceedings which resulted in cancellation of their contracts is in conflict with the rule announced in *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, and other cases decided by this Court.

Petitioner contended before the Circuit Court that the Committee and each employee party to the contract were indispensable parties to the proceedings and entitled to legal notice thereof in view of the invalidation of their contracts. Nevertheless, the opinion of the Court is silent on this fundamental question, except insofar as the Court held "the situation was within the *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 58 S. Ct. 571, 82 L. Ed. 831, 115 A. L. R. 307, and not within *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 231-239, 59 S. Ct. 206, 83 L. Ed. , and the company union could be displaced without being made a party", a statement which demonstrates beyond doubt that the Court below misapprehended the basic nature of the questions presented.

Petitioner never claimed, and does not now claim that a labor organization dominated by the employer is entitled to notice of the proceedings which culminate in the employer being required to cease recognizing or supporting it. The rule to the contrary was announced by this Court in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261. But in that case no question of contract

was involved, and later the application of that rule in a case involving contract rights was forbidden (*Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197). The Circuit Court, however, treated all petitioner's arguments on the subject of lack of notice as though applicable only to the disestablishment of the Committee as a bargaining organization, and, in its opinion, made no reference to the rights of the Committee and the employees to notice and hearing of proceedings insofar as their contracts were involved.

Here we have a contract executed with the Committee, and with employees who executed individual counterparts of such contracts. The benefits received by the employees under the contracts, such as the maintenance of an irreducible wage scale, vacations with pay, extra compensation for overtime, arbitration of disputes and the prohibition of strikes and lock-outs, are substantial property rights in a constitutional sense (*Coppage* v. *Kansas,* 236 U. S. 1; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 59 S. Ct. 206, 220), which are personal to each employee and may be individually enforced by him.

That the Committee and the employees were entitled to legal notice and hearing and were indispensable parties to the proceeding was settled definitely by the ruling of this Court in the *Consolidated Edison* case (305 U. S. 197, 59 S. Ct. 206, 218), as follows:

> "The Brotherhood and its locals contend that they were indispensable parties and that in the absence of legal notice to them or their appearance, the Board had no authority to invalidate

the contracts. The Board contests this position, invoking our decision in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261. That case, however, is not apposite, as there no question of contract between employer and employee was involved. The Board had found upon evidence that the employer had created and fostered the labor organization in question and dominated its administration in violation of Section 8(2). The statement that the 'Association' so formed and controlled was not entitled to notice and hearing, was made in that relation. Id., pp. 262, 270, 271. It has no application to independent labor unions such as those before us. *We think that the Brotherhood and its locals having valuable and beneficial interests in the contracts were entitled to notice and hearing before they could be set aside.* *Russell* v. *Clark's Executors*, 7 Cranch 69, 96; *Mallow* v. *Hinde*, 12 Wheat. 193, 198; *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 235; *Garzot* v. *de Rubio*, 209 U. S. 283, 297; *General Investment Co.* v. *Lake Shore Railway Co.*, 260 U. S. 261, 285. The rule, which was applied in cases cited to suits in equity, is not of a technical character but rests upon the plainest principle of justice, equally applicable here. See *Mallow* v. *Hinde*, *supra*." (Italics ours.)

The Board may attempt to distinguish the *Consolidated Edison* case by pointing out that there the labor organization involved was found by it not to be dominated or controlled by the company, whereas in this case the reverse is true. But this Court did not say that a company-dominated union is *not entitled* to legal notice and hearing when that union also possesses contract rights. The basis of the ruling in the *Pennsylvania Greyhound* case was that the order did

not run against the company union and its presence was not necessary for appropriate action by the Board. That reason, under the principle of the *Consolidated Edison* case, cannot apply to a situation where the property rights of all parties to a contract are terminated by the Board's order.

If, however, this Court will ultimately decide that notice to the labor organization, under such circumstances, need not be given, the individual employees, each of whom are also parties to the contracts are obviously in an entirely different category. Unquestionably under the rule of the Consolidated Edison case they must receive notice and hearing despite the disability under which their bargaining representative may suffer. Such disability of company control, if it should exist, cannot deprive employees who themselves are under no such disability of the constitutional right to notice and hearing of proceedings vitally affecting their interests.

In *Employers Reinsurance Corp. v. Bryant*, 299 U. S. 374, 381, 81 L. ed. 289, 293, this Court said:

> "It is conceded, and rightly so, that the district court was without personal jurisdiction of the defendant, and that in the absence of such jurisdiction the court was without power to proceed to an adjudication. * * * In this instance the dispute or controversy was not properly within the jurisdiction of the district court unless * * * (3) the defendant was before the court by reason of a general appearance or a valid service of process. Each of these elements of jurisdiction was essential, and if any was wanting there was an absence of proper jurisdiction. The defendant was not before the court, and therefore it was without jurisdiction to proceed with the suit. Counsel

for the petitioner assume that the presence of the defendant was not an element of the court's jurisdiction as a federal court; but the assumption is a mistaken one. By repeated decisions in this Court it has been adjudged that the presence of the defendant in a suit *in personam,* such as the one now under discussion, is an essential element of the jurisdiction of a district (formerly circuit) court as a federal court, and that in the absence of this element the court is powerless to proceed to an adjudication."

In 21 Corpus Juris, Equity, Sec. 277, page 282, it is said:

> "All the parties to a contract are ordinarily indispensable parties to a bill in equity for its enforcement, or for its rescission and cancellation, or reformation, or to enjoin its performance or its breach, particularly where they have joint or common rights or liabilities. The rescission of an agreement requires the presence of all claiming property through such agreement."

At page 273 the following appears in reference to indispensable parties:

> "This class includes all persons who have an interest in the controversy of such a nature that a final decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. Accordingly, persons whose interests will necessarily be affected by any decree that can be rendered are necessary and indispensable parties, and the Court will not proceed to a decree without them."

Continuing, at page 277, appears the following:

> "The principle underlying the rule as to indispensable parties is fundamental and underlies the administration of justice in all courts of equity. It is that no proceedings shall take place with respect to the rights of any one, except in his presence. The rule as to indispensable parties is neither technical nor one of convenience, but is of imperative obligation."

POINT III.

The cancellation of the contracts was effected without due process of law in view of the stipulation of counsel that such contracts were not in issue.

At the hearing, while a witness was being cross-examined, the following colloquy (R. 380-381) took place between Mr. Sklar, attorney for the Union, Mr. Graham, attorney for the Board, Mr. Mann, attorney for the company, and the Trial Examiner:

> "Mr. Sklar: Objected to, Mr. Examiner, on the ground that **this charge applied to August 2nd and has nothing to do with the contract of September 20th.**
>
> Mr. Mann: It talks about individual contracts, and they offered in evidence a contract.
>
> Mr. Sklar: Those contracts referred to are the ones mentioned by Mr. Sanford on July 29th.
>
> Mr. Graham: **In order to get the right effect, we are going to let these in. Complaint embodies none of these contracts.**
>
> Mr. Mann: May I ask on the record whether they want to go into this question of contracts under their amended charge. If not, let's forget about it.
>
> (482) Trial Examiner Korey: I have ruled you can ask the question. Please continue."

The contract of September 20th referred to by Mr. Sklar appears in the record as Board's Exhibit 10 (R. 851-857) (admitted R. 385), and is a facsimile of the many contracts executed during the period from September 10, 1937 to September 20, 1937.

Petitioner was entitled to and did rely upon the statements of counsel quoted above, and of course, conducted its defense thereafter as if the contracts were not in issue. Though petitioner submitted the evidence of one witness, Walter J. Healey, an officer of petitioner, on the subject of how the contracts were negotiated, such testimony was incidental and introduced only for the purpose of revealing the character of petitioner's dealings with the Committee. If petitioner had not been misled, it would have conducted its case in an entirely different manner. Its attorney would have cross-examined the Board's witnesses thoroughly on the subject of the contracts and called as witnesses each employee who signed a contract, as he offered to do before the stipulation was received (R. 378), as well as each member of the Committee and certain officers to testify on all the facts surrounding the same. None of these things were done, because it was believed that no necessity existed therefor.

The conclusion is irresistible that the vitiation of the contracts in this case was either the product of a deliberate purpose by the Board not to reveal its claims and intentions with respect to the contracts, or that its determination to void them was an afterthought conceived and executed without notice or opportunity of hearing. In either event, there was not due process of law.

> "The maintenance of proper standards on the part of administrative agencies in the perform-

ance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

Morgan v. *U. S.*, 304 U. S. 1, 22, 58 S. Ct. 773, 778.

POINT IV.

The recognition by the Circuit Court of the existence of authority in the Board to pass upon and supervise the terms of an employment agreement conflicts with the decision of this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1.

The Circuit Court enforced the Board's order cancelling the contracts and we gather from the opinion (R. 911), that the contract was deemed unlawful by it for two reasons which may be summarized as follows:

(1) That the stipulation of the employees and the Committee (R. 854) not to propose changing to a closed shop or to demand a signed contract with any union is unlawful for the reason that "the right to propose the change is secured by statute as part of the right to negotiate" (R. 911).

(2) The right of a discharged employee to submit to the employer facts indicating that his discharge was unreasonable (R. 855) "suggests that the company union shall not act for him" (R. 911).

The effect of the decision of the Court below on this point is to give judicial assent to the proposition that the Board has power to scrutinize and adjudicate on the terms of an individual contract between employer and employee, in disregard of the holding of this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 45, 57 S. Ct. 615, 628, as follows:

> "It was taken 'to prohibit the negotiation of labor contracts generally applicable to employees' in the described unit with any other representative than the one so chosen, 'but not as precluding such individual contracts' as the Company might 'elect to make directly with individual employees'. We think this construction also applies to Section 9(a) of the National Labor Relations Act.
>
> "The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine'."

To the same effect see:

> *National Labor Relations Board* v. *The Sands Mfg. Co.*, 96 Fed. (2d) 721 (C. C. A. 6th);
> *National Labor Relations Board* v. *Delaware-New Jersey Ferry Co.*, 90 Fed. (2d) 520 (C. C. A. 3rd), certiorari denied Nov. 8th, 1937.

Apart from this, the invalidity of the Circuit Court's objections to the contract is easily demonstrated. The right of a discharged employee to submit to the employer facts indicating that his discharge was unreasonable is expressly secured by Section 9(a) of the Act,* which provides that any individual employee or group of employees shall have the right at any time to present grievances to their employer.

The other objection is equally without merit. It is entirely true that under the statute employees, through their chosen representatives, have the right to bargain collectively, or, as the Court below said, have the "right to negotiate". But the right to negotiate under the statute is futile and meaningless unless considered as a means to an end, namely, the consummation of an agreement. The Act contemplates the making of contracts with labor organizations. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197. Such contracts must, by their very nature, definitely fix and establish the respective rights, duties and obligations of the parties with that degree of finality which is the underlying reason for entering into contractual relationships. To the extent that employees agree with their employer on any one point they say in effect, "We will negotiate no further on this, since it is settled for the duration of our agreement", and such arrangements are encouraged, rather than precluded, by the policy of the Act. The waiver by employees of the requirement of a closed shop or a signed agreement with any particular type of union, is, of course, not prohibited by the Act.

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* See Appendix.

POINT V.

By enforcing the Board's order cancelling the contracts, the court below gave judicial approval to the proposition that the Board possesses such power, thereby creating a conflict with the decision of this Court in *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197.

In *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 59 S. Ct. 206, 219, on the subject of the invalidation of contracts, this Court held:

> "Further, the Act gives no express authority to the Board to invalidate contracts with independent labor organizations. That authority, if it exists, must rest upon the provisions of Section 10(c). That section authorizes the Board, when it has found the employer guilty of unfair labor practices, to require him to desist from such practices 'and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act'. We think that this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order."
>
> "The power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of

the Act. The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence or violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair practices. Compare *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, supra.* Here, there is no basis for a finding that the contracts with the Brotherhood and its locals were a consequence of the unfair labor practices found by the Board or that these contracts in themselves thwart any policy of the Act or that their cancellation would in any way make the order to cease the specified practices any more effective."

POINT VI.

The finding of domination over the Committee reached in this case was not based on substantial evidence; other Circuit Courts have declared similar factual situations to be no evidence of domination.

In the petition for the writ annexed hereto, there is a narration of those events which culminated in the signing of the petition (R. 866a) by the employees, said petition having been admitted into evidence without objection (R. 575). That petition, dated September 9th, 1937, and signed by 118 out of about 140 employees, is clear and specific. It notifies the management of the election of a committee of eight persons as the employees' representatives for collective bargaining, and that the authority vested in that committee "supersedes any authority that any of the undersigned may have given to any other group, organization or individual, and that no one except

the collective bargaining committee consisting of our fellow workers is authorized to represent us in collective bargaining."

Upon the execution of this document on September 9th, 1937, the Bakery & Confectionery Workers International Union lost its status of exclusive bargaining agent and in its place the committee was empowered to bargain collectively with petitioner on behalf of the employees. Section 9(a) of the National Labor Relations Act.

The Board, however, refused to take the petition seriously, or, apparently, to believe it possible that employees would voluntarily sever their connection with the union, even though the union's benefactions to the employees thus far had consisted in the carrying on of a strike and in compelling them to march on picket lines for over three weeks (R. 526) without payment of strike benefits (R. 129). But notwithstanding the suspicions with which the Board may regard this document, it must base any conclusion it reaches on the subject only on substantial evidence. *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142, 147; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197. *Prima facie,* the petition ousted the union from its role as bargaining agent, with the committee supplanting the union; *and the burden of proving otherwise rested on the Board. National Labor Relations Board* v. *A. S. Abell Co.,* 97 Fed. (2d) 951 (C. C. A. 4th).

A like situation in which employees circulated a petition and organized a committee to represent them in dealings with their employer was presented in

National Labor Relations Board v. *A. S. Abell Co.*, 97 Fed. (2d) 951, 957 (C. C. A. 4th). The Court held:

> "There is, however, no justification for the position that spontaneous action on the part of the men is so improbable as to warrant the inference that it was inspired by the management."

If the Board suspected that the Committee was dominated by petitioner, or that the latter had a hand in its formation, the logical witnesses to prove these facts, if such facts existed, would naturally be those persons who composed the Committee as well as those 118 employees who signed the petition. Yet, the indisputable fact remains that not one of such persons was called or gave any testimony at the hearing, and there is not a shred of evidence in the record which indicated, at the hearing, that the validity of the petition as an expression of the workers' choice was ever assailed or impeached in the slightest degree. The proof was all the other way, since it was not denied that the first impulse for the formation of the Committee came from employees who were "fed-up" with the union (R. 526); that petitioner refused to deal with them unless a majority of the employees signified their assent; and that when petitioner's President dictated the form of the petition, *he did so at the request of the employees* (R. 576).

In the case of *National Labor Relations Board* v. *Lion Shoe Company*, 97 Fed. (2d) 448 (C. C. A. 1st), the situation was quite similar to the one at bar. Employees had approached the management and asked if it would deal with them if they formed "an independent, legitimate labor union with representatives of all departments in the factory represented". After

a conference, contracts were typed in the office of the employer. The Court held, at page 454:

> "The fact that it was finally typed in the office of the respondent is also suggested in the Board's decision as evidence of domination by the respondent, *which discloses the limits to which the Examiner and the Board went in drawing conclusions of domination.* Obviously no weight could possibly be properly given to these facts as showing domination." (Italics ours.)

and at page 458:

> "* * * there would appear to be nothing in the Act that prevents an employer from entering into an agreement with a labor organization formed of old employees, on whatever terms may be agreed upon, *no unfair labor practice being used or domination shown.*"

The Board, in its decision, ordered petitioner to bargain with Bakery & Confectionery Workers International Union (R. 895, 896), thereby giving no heed or effect to the employees' views, as evidenced by the petition. The Circuit Court, however, did not go so far. It ordered an election to determine whether the union is still the representative of the majority of the employees, but in so doing it likewise gave no effect to the petition. The authenticity of that petition could only be impugned by substantial evidence (not by trivialities such as typing in petitioner's office) before it could be disregarded. In the absence of such substantial evidence the Board and the Court below were bound, for judicial purposes, to give effect to this uncontroverted written exhibit according to

its terms (*Chesapeake & Ohio R. R. Co.* v. *Martin*, 283 U. S. 209), and the failure so to do warrants a review by this Court.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Honorable Court of its supervisory powers under the authority hereinabove cited, and that to such end a writ of certiorari should be granted and this Honorable Court should review the decision of the United States Circuit Court of Appeals for the Second Circuit, and finally reverse it.

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Counsel for Petitioner.

JOSEPH YASPAN,
On the Brief.

Appendix.

Applicable Provisions of the National Labor Relations Act

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

"Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to Section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

"Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all

the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

"SEC. 10.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling."

Applicable Provisions of the Rules and Regulations of the Board, Series 1, as Amended and Effective April 27th, 1936 (1 L. R. R. Manual 814)

ARTICLE II.

Procedure Under Section 10 of the Act for the Prevention of Unfair Labor Practices

Charge

"Section 1. A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization. A charge may be withdrawn only with the consent of the Regional Director with whom such charge was filed or of the Board. Upon withdrawal of any charge, the Regional Director shall dismiss any complaint based thereon.

"Sec. 2. Except as provided in Section 37 of this Article, such charge shall be filed with the Regional Director for the Region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more Regions may be filed with the Regional Director for any of such Regions.

"Sec. 3. Such charge shall be in writing, the original being signed and sworn to before any notary public or any agent of the Board authorized to administer oaths or acknowledgments. Three additional copies of such charge shall be filed. A blank form for making a charge will be supplied by the Regional Director upon request.

"Sec. 4. Such charge shall contain the following:

(a) The full name and address of the person or labor organization making the charge.

(b) The full name and address of the person against whom the charge is made (hereinafter referred to as the 'respondent').

(c) A clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence.

"Sec. 5. After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the 'parties to the proceeding') a formal complaint in the name of the Board stating the charges and containing a notice of hearing before a Trial Examiner at a place therein fixed and at a time not less than five days after the service of the complaint. A copy of the charge shall be attached to the complaint.

"Sec. 9. If, after the charge has been filed, the Regional Director declines to issue and cause to be served a complaint, the person or labor organization making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director.

"Sec. 37. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge to be filed with it, in Washington,

D. C., or may, at any time after a charge has been filed with a Regional Director pursuant to Section 2 of this Article, order that such charge, and any proceedings which may have been instituted in respect thereto—

(a) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(b) be consolidated for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same region; or

(c) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in or transferred to such other Region, or for any other purpose.

The provisions of Sections 3 to 31, inclusive, of this Article shall, in so far as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this Section, be reserved to and exercised by the Board. After the transfer of any charge and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this Section, the provisions of Sections 3 to 36, inclusive, of this Article, shall apply to such charge and such proceeding as if the charge had ogiginally been filed in the Region to which the transfer is made."

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IN THE

Supreme Court of the United States

October Term, 1939.

No. 272.

NATIONAL LICORICE COMPANY,
Petitioner,

—against—

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONER'S BRIEF.

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THE COURT PRESS, N. Y. C.

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IN THE

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October Term, 1939.

No. 272.

NATIONAL LICORICE COMPANY,

Petitioner,

—against—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONER'S BRIEF.

Opinions Below.

The opinion of the United States Circuit Court of Appeals for the Second Circuit is reported in 104 Fed. (2nd) 655. It was filed June 12th, 1939, and an order or decree thereon was entered July 6th, 1939. The opinion and order are printed at pages 907 to 917 of the record.

The decision, findings of fact and conclusions of law of the National Labor Relations Board are printed at pages 867 to 894 of the record and its order is printed at pages 894 to 897. Said decision, order, etc., is reported in 7 N. L. R. B. 537.

Jurisdiction.

The jurisdiction of this Court arises under Section 240(a) of the Judicial Code, as amended by the Act of February 13th, 1925, c. 229, Sec. 1, 43 Stat. 938 (U. S. C., Tit. 28, Sec. 347(a)) and Section 10(e) of the National Labor Relations Act.

The petition for a writ of certiorari was filed August 7, 1939 and certiorari was granted October 9, 1939.

Statement of the Case.

The Charge:

Proceedings against petitioner were instituted under the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. A. Secs. 151 *et seq.*) by the filing of a sworn charge under Section 10(b) of said Act by the Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity (R. 772, 773). The charge was sworn to before a notary public by James Anderson, Vice-President, on August 2, 1937 and filed with the Board on August 13, 1937. As will be shown later, these dates are of especial significance.

The charge alleged, in substance, that petitioner has engaged in and is engaging in unfair labor practices under Section 8, subsections (1), (2) and (5) of said Act* in that petitioner:

> (a) coerced and attempted to coerce its employees into signing individual contracts with it,

* See appendix.

(b) has called meetings and attempted to compel employees to attend said meetings,

(c) has attempted to compel employees to form committees not of their own choosing to bargain collectively with it,

(d) has by threat and intimidation interfered with the formation and administration of the complaining Union,

(e) has refused to bargain collectively with representatives of the employees.

The Board's Complaint:

On October 7, 1937 the National Labor Relations Board (hereinafter referred to as the Board) by Elinore M. Herrick, its Regional Director for the Second Region, issued against petitioner its complaint and notice of hearing before a Trial Examiner (R. 774-782). After a recital of facts concerning the interstate activities of petitioner (R. 775) and the appropriate collective bargaining unit (R. 775, 776), the complaint alleged, in substance, that:

(a) Since July 28, 1937, the Union had been the exclusive representative of petitioner's employees for collective bargaining purposes and that on and after July 29, 1937, petitioner refused to bargain collectively with it (R. 776).

(b) On or about July 16, 1937, petitioner formed and initiated a labor organization and has dominated and interfered with its administration and contributed support to it (R. 777).

(c) On and from July 15, 1937, petitioner, by various threats, warned its employees not to become members of the Union, and made signing of individual contracts a condition of employment (R. 777-778).

(d) On August 2, 1937, because of petitioner's acts, its employees went on strike (R. 778).

(e) The aforesaid acts of petitioner constituted unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (5) of the Act.

The Petitioner's Answer:

The answer was executed and filed by petitioner on October 13, 1937 and contained appropriate denials of and affirmative defenses to allegations of the complaint (R. 790-798).

The Trial Examiner's Intermediate Report and Petitioner's Exceptions Thereto:

The hearings before the Trial Examiner designated by the Board commenced on October 13, 1937 and ended on October 20, 1937. Thereafter and on February 7, 1938, the Trial Examiner rendered his intermediate report (R. 804-828), which found that the allegations of the complaint had been established, and that petitioner had engaged and was engaging in unfair labor practices within the meaning of Section 8, subdivisions (1), (2) and (5) of the Act. The Conclusions and Recommendations of the Trial Examiner (R. 824-828) are not detailed here, since later they were incorporated practically *in toto* in the Board's order, discussed hereafter.

To the intermediate report petitioner filed a Statement of Exceptions, dated February 17, 1938 (R. 829-836), which analyzed the evidence and the law in the case, and appropriately excepted to each of the Trial Examiner's Rulings, Findings of Fact, Conclusions and Recommendations in so far as they were adverse to the interests of petitioner.

Oral argument before the Board was waived by all parties (R. 841).

The Board's Decision and Order:

On May 31, 1938 the Board issued its decision (R. 867-894) and order (R. 894-897). The order required petitioner to:

> Cease and desist from:
>
> (a) Dominating or interfering with the Collective Bargaining Committee of the National Licorice Company; from recognizing it as representative of any of the employees; from giving effect to contracts with that Committee and individual contracts with its employees; from refusing to bargain collectively with the Union; from interfering with the exercise by employees of their rights as guaranteed by Section 7 of the Act (R. 894-895).
>
> Take the following affirmative action:
>
> (b) Withdraw all recognition from the Collective Bargaining Committee of the National Licorice Company as representative of any employees and completely disestablish it; personally inform, in writing, each member of the Committee and each employee who signed individual contracts of employment that such contracts violate the Act, that employees are released from its obligations and that the company will no longer demand its performance; upon request, bargain with the Union as to rates of pay, wages, hours and other conditions of employment and if an understanding is reached, embody said understanding in an agreement for a definite term to be agreed upon, if requested to do so by said Union; post notices in conspicuous places for

thirty (30) consecutive days that petitioner will cease and desist, as aforesaid, that the Committee is disestablished, and that the individual contracts are void and of no effect; notify the Regional Director, within ten (10) days, what steps have been taken to comply with the order (R. 895-897).

The Enforcement Proceedings:

Petitioner not having complied with the terms of the Board's order as aforesaid, the Board petitioned the Circuit Court of Appeals for the Second Circuit for enforcement thereof pursuant to Section 10(e) of the Act (R. 4-12). Petitioner opposed the application of the Board and after hearing argument and receiving briefs, the Circuit Court, on June 12, 1939, rendered an opinion (R. 907-913) and on July 6, 1939 filed its decree thereon (R. 914-917).

The Circuit Court sustained the Board's order and decreed enforcement thereof except in one respect. Its order or decree (914-917) followed exactly the Board's order both as to phraseology and paragraph numbering, except that in paragraphs 1.(d) and 2.(c) the Court provided that bargaining with the Union by petitioner was conditioned upon said Union being certified by the Board as the representative of the employees following an election.

Certiorari was granted by this Court on October 9, 1939.

The Pertinent Facts:

Petitioner is a New York Corporation with its factory located in the Borough of Brooklyn, City of New York, and is engaged in the busines of manufacturing and selling licorice and related products.

Approximately 140 employees were employed at the Brooklyn plant during the period concerned in this controversy. On August 2, 1937, the employees went out on a strike which lasted until August 25th, 1937, during which interval petitioner stopped all operations (R. 338). There was evidence submitted at the hearing that many employees, not being in sympathy with the strike, tried to resign from the Union and return to work, but were fearful of violence at the hands of the Union (R. 521-524). On August 25th, 1937, the plant reopened and the employees gradually returned to work until by September 20th, 1937, all employees, with the exception of two who never applied for their jobs (R. 340, 568), were taken back regardless of their union membership or union activities (R. 568).

On August 27th, 1937, Walter J. Healey, petitioner's assistant secretary, was requested by a group of employees to confer with them at the Y. M. C. A. (R. 525). He did so and was informed that the employees were resentful of the treatment accorded them by the Union, were desirous of giving up the strike, returning to work and forming their own bargaining organization (R. 526). Healey replied that their jobs were open to them but that before the company could deal with any representatives of employees, such representatives must obtain "the authorization of 51%" (R. 527).

On September 9th, 1937, Healey was informed by the employees that they had elected, from among their number, a bargaining committee of eight persons who desired to present some requests to the company officials (R. 577). Petitioner had taken no part whatever in the formation or selection of this committee which was created solely by the employees themselves,

without suggestion, instigation or influence of the management (R. 579).

Petitioner, however, refused to deal with this committee unless it could supply written proof that it duly represented the employees (R. 576; 725). Bill McCann, one of the committee members, asked Healey for assistance in drawing up a letter or form to that effect. He was referred to Mr. Sanford, petitioner's president, who, on September 9th, 1937, prepared a form of petition for the use of the employees, which, if executed by a majority, would be acceptable as the written proof of authorization insisted upon by petitioner (R. 576).

On September 10th, 1937, the petition which had been drawn by Sanford at McCann's request, was presented to the company's officials, said document having been signed by the eight members of a committee and by 118 of the 140 employees, constituting over 85% of all (R. 579-580). At the hearing conducted by the Board this petition was admitted into evidence without objection as Respondent's Exhibit 10 (R. 866a), and because of its importance to the questions of law involved in this proceeding, is set forth below in full, except that signatures are omitted.

"September 9, 1937.

National Licorice Company,
106 John Street, Brooklyn, N. Y.

Attention: Mr. D. D. Sanford, President

Gentlemen:

We, the undersigned employees of the National Licorice Company, hereby notify you that we have this day elected a committee of our fellow workers, whose signatures are affixed hereto, as

our representatives in collective bargaining with you. We authorize these representatives to enter into and sign a contract with the employer provided it contains substantially the provisions outlined to us by the Management.

You are also notified that the authority given to our fellow workers to represent us in collective bargaining supersedes any authority that any of the undersigned may have given to any other group, organization or individual, and no one except the collective bargaining committee consisting of our fellow workers is authorized to represent us in collective bargaining.

Very truly yours,"

On the same day, September 10th, 1937, the committee, on its own volition, appeared at petitioner's office and conferred with the company's officials for two hours (R. 697) on the terms of the proposed contract. The committee, on behalf of all the employees, requested an increase of wages (R. 581), pay for all holidays (R. 583), establishment of piece-work rates high enough to equal hourly rate earnings (R. 706) and the reduction of the hours of firemen and maintenance men from 54 to 44 (R. 708).

After discussion (R. 583), the committee accepted petitioner's offer of a 5% increase of wages, one week's vacation with pay (R. 582), a reduction of the hours of firemen and maintenance men (R. 708), and the adjustment of piece-work rates and overtime rates (R. 706). The term of the proposed contract was settled at three years (R. 584).

The wage scale, reflecting the 5% increase, was inserted in the contract (R. 852) and such wage scale could not be reduced by the employer until July 10th, 1938, although it could be voluntarily increased

before that time (R. 855). If changes in hours, wages, vacations or working facilities for the year ensuing after July 10th, 1938 could not be satisfactorily settled by agreement, disputes on these points were to be submitted to arbitration (R. 856). Strikes and lockouts were prohibited by the contract (R. 854).

After all differences had been settled, the contract was executed by petitioner with the Committee and with each individual employee who wished to become a party thereto, petitioner making it clear to employees that signing was entirely optional and that continuation of employment was not predicated upon signing the contract (R. 585).

The contracts were distributed to the employees by the Committee, supervisory employees being admonished not to participate under pain of dismissal (R. 588, 589). A large number of contracts, one of which is printed in the record (R. 850-857), were thereupon executed in accordance with the foregoing, but the exact number executed does not appear.

At the hearing, the Board did not produce a single witness to give evidence as to the manner or method in which the employees appended their signatures to the petition of September 9th, 1937, in evidence as Respondent's Exhibit 10 (R. 866a), pursuant to which the employees had repudiated the Union as their bargaining agent and substituted in its place their own Committee of eight fellow workers, nor did it produce a single member of that Committee. Out of petitioner's entire employee body, the Board produced only two witnesses who gave some testimony on the subject of the contracts and each witness testified that they had signed voluntarily and without coercion (R. 376; 766; 380-381).

To the proceedings instituted by the Board, only

petitioner was made a party respondent. Neither the Committee nor any one of the numerous employees holding individual contracts with petitioner were given notice of the proceedings or named as parties or served with any charge, summons, notice, complaint or other process, or granted any opportunity to be heard on matters affecting their interests. Not being parties and not receiving any notice whatever, the Committee and the employees took no part in the hearings before the Trial Examiner which were conducted *ex parte* as to them in every respect.

The facts outlined above constitute all that is material for the consideration of the questions presented. We omit, as irrelevant, the evidence relating to petitioner's dealings with the Union and the bargaining with it on July 29, 1937. Petitioner contended below that the Board and the Circuit Court were bound, as a matter of law, to conclude that at the date of the hearings in October, 1937 the Union was no longer the representative of petitioner's employees, and therefore petitioner should not be ordered to resume bargaining with it. For the same reason it is futile now to discuss the voluminous testimony on the bargaining negotiations with the Union. It is immaterial whether petitioner did or did not bargain collectively with the Union in July, 1937, because prior to the hearings and on September 9, 1937 the employees had repudiated it as their exclusive bargaining agent (R. 866a).

Likewise, we omit as wholly immaterial certain testimony as to other events purporting to have occurred in July, 1937, despite the fact that the Board, in all the prior proceedings herein, has dwelt at great length thereon, for reasons best known to itself. These matters relate to an alleged attempt by peti-

tioner to form a "company union" in July, 1937 which it is conceded by the Board, never materialized (R. 461) (Board's Decision, R. 876), and concerning which the Board made no order.

Statutes and Regulations Involved.

The statutes and regulations involved are set forth in an Appendix, *infra*, pages 57-61.

Questions Presented.

1. Were petitioner's employees necessary parties to, and entitled to notice of the proceedings abrogating and annulling their individual contracts of employment with petitioner?

2. Was the Collective Bargaining Committee of the National Licorice Company, a party to such contracts with petitioner, likewise entitled to notice of said proceedings and the right to be heard thereon?

3. Is the National Labor Relations Board, as an administrative agency of the United States, bound by the statements made upon the hearing by the attorneys for the Union and the Board respectively, that the charge filed against petitioner did not apply to these contracts and that the complaint did not embody them, or could the Board repudiate such statements of counsel and cancel the contracts notwithstanding?

4. Does the National Labor Relations Act confer upon the Board the power, either express or implied, to cancel and destroy an individual contract of employment?

(a) If the Board has such power over individual contracts of employment, may it be exercised despite the fact that in this case not a single employee whose contract was rescinded has requested such result, given his consent thereto, tendered back the benefits received, or even testified on that subject?

(b) Did the Board, in cancelling the contracts in this case, deprive petitioner and its employees of property without due process of law within the meaning of the Fifth Amendment?

5. Can a contract between employer and employee be said to be "in violation of the National Labor Relations Act" or "unlawful", as the Board and the Court below characterized the contracts in this case, when the Act contains no provisions which affect or restrict, in the slightest degree, the common law rights of persons to contract for the sale of their labor on whatever terms they may voluntarily choose, and this Court, in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, 57 S. Ct. 615, 628, interpreted said Act as not precluding such individual contracts as an employer might elect to make directly with individual employees or from hiring individuals on whatever terms he may, by unilateral action, determine?

6. Are the terms of the contracts in violation of the National Labor Relations Act?

7. Is the jurisdiction of the Board limited to the hearing and determination of only such unfair labor practices as are embodied within a charge, as provided by Section 10(b) of the Act and Article II, Sections 1, 2, 3, 4, 5 and 9 of the Rules and Regulations of the Board, Series 1, as amended, or does the

Board have power to conduct a hearing and make an order respecting unfair labor practices not charged?

8. Whether the Board made findings on substantial evidence when it gave no heed or effect to the written petition of a large majority of the workers revoking the authority of the Union to represent them and designating their own Committee, when there is no proof whatever in the record impeaching the petition in the slightest degree or of even an attempt to challenge its authenticity or validity?

9. Whether the Circuit Court of Appeals made a proper order in directing petitioner to bargain collectively with the Bakery and Confectioners Union, depending upon the result of an election to be conducted by the Board.

Specification of Errors.

The Circuit Court of Appeals erred:

(1) In refusing to find and hold that the jurisdiction of the Board is limited to the hearing and determination only of such unfair labor practices as are alleged in a charge, and that the Board cannot adjudicate with respect to matters not so charged.

(2) In ordering the disestablishment of the Committee and the cancellation of the contracts when the existence of neither of these matters had ever been charged against petitioner as unfair labor practices.

(3) In not finding and holding that the Committee and each of the employees whose contracts were destroyed by the Board's order were necessary and

indispensable parties to, and were entitled to notice of the proceedings and the right to be heard thereon.

(4) In not finding and holding that the Board lacked power or authority to cancel individual contracts of employment, and that under the circumstances existing in this case a cancellation would result in petitioner, its employees, and the Committee being deprived of property without due process of law.

(5) In holding that "the situation was clearly within *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 58 S. Ct. 571, 82 L. Ed. 831, 115 A. L. R. 307, and not within *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 231-239, 59 S. Ct. 206, 83 L. Ed. * * *."

(6) In holding that petitioner, through the contract, was "exacting unlawful concessions" from the Committee.

(7) In not finding and holding that the statement and concession of the attorneys for the Board and the Union, made at the hearing to the effect that the contracts were not in issue, was binding upon the Board so as to preclude it from making any order or adjudication respecting such contracts.

(8) In ordering the contracts between petitioner, the Committee and individual employees to be cancelled and set aside.

(9) In ordering petitioner, depending upon the result of an election to be conducted by the Board, to bargain collectively with the Union, in view of the

uncontroverted evidence in the record that such Union, as far back as September 9, 1937, was repudiated by the workers and its authority as bargaining agent revoked by the written instrument in evidence as Respondent's Exhibit 10 (R. 866a).

(10) In failing to find and hold that the Board's order was not based upon substantial evidence and that said order was, in all respects, improper and unlawful.

Summary of Argument.

I.

The Board lacked jurisdiction to issue a complaint, hold a hearing or make any order cancelling the contracts or disestablishing the Committee for the reason no charge of unfair labor practice respecting same was ever made. The charge in this case, dated August 2nd, 1937, was filed with the Board on August 13, 1937 and concededly neither the Committee nor the contracts came into existence until September, 1937. Section 10(b) of the Act, and the Regulations of the Board require, as a condition precedent to the Board's power to act, the existence of a charge of unfair labor practices.

II.

The cancellation of the contracts was improper for the following reasons:

(a) The Board does not possess the power to cancel individual contracts of employment. *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*,

301 U. S. 1, 45; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 235.

(b) Neither the Committee nor the individual employees, as parties to the contracts received any notice or hearing of the proceedings. Under well-settled principles, they could not be deprived of their valuable and substantial rights in a proceeding conducted *ex parte* as to them. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 233; *Barney* v. *Baltimore*, 73 U. S. 825, 6 Wall. 280, 284; *Mallow* v. *Hinde*, 12 Wheat. 193, 198; *Gregory* v. *Stetson*, 133 U. S. 579; *Shields* v. *Barrow*, 17 How. 130, 140; *Employers Reinsurance Corp.* v. *Bryant*, 299 U. S. 374, 381; 21 Corpus Juris, Equity, pages 273, 277, 282.

(c) The terms of the contracts do not violate the National Labor Relations Act: The objections made by both the Board and the Circuit Court of Appeals have no merit when examined in the light of the reports of Congressional Committees, the specific provisions of the Act and the interpretations placed thereon by this Court in *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, 301 U. S. 1 and *The Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132.

(d) The contracts were not void because of the circumstances attending their inception. There was not even a scintilla of evidence to support the Board's finding of coercion practiced upon employees.

(e) The contracts are not in violation of any policy of the Act or of any national public policy, since their terms are neither prohibited by the Act nor in-

jurious to the interests of the public. *Hartford Fire Ins. Co.* v. *Chicago, M. & St. P. R. Co.*, 20 Sup. Ct. 33, 175 U. S. 91, 106, 44 L. Ed. 84; *Baltimore & O. S. W. R. Co.* v. *Voight*, 20 Sup. Ct. 385, 387, 176 U. S. 498, 505, 44 L. Ed. 560; *Southern Ry. Co.* v. *Blunt & Ward*, 155 Fed. 496, 497; *U. S. Trans-Missouri Freight Ass'n*, 58 Fed. 69, 7 C. C. A. 15, 24 L. R. A. 73; *Swann* v. *Swann*, 21 Fed. 299. No rights guaranteed by Section 7 of the Act are waived by the employees under the contracts, although the benefits conferred by that section, being permissive and not mandatory, may be voluntarily waived by employees without violating any concept of public policy. *Sentenis* v. *Ladew*, 140 N. Y. 463, 466; 67 Corpus Juris 307, sec. 8.

(f) The attorneys for both the Board and the Union, during the course of the hearings before the Board, conceded that the validity of the contracts was not in issue, and the Board was bound by this concession. *Morgan* v. *U. S.*, 304 U. S. 1, 22; *Oscanyan* v. *Winchester Repeating Arms Co.*, 103 U. S. 261; *Shanley, et al.* v. *Bowers* (C. C. A. 2nd), 81 Fed. (2nd) 13, 16.

(g) Petitioner did not, under Section 10(e) of the Act, lose the right to interpose the objection of lack of notice to the Committee and the employees. The objection was seasonably urged by petitioner in its memorandum to the Trial Examiner, an agent of the Board, and in petitioner's exceptions to his Intermediate Report. Petitioner is not precluded from urging this objection under the principle of *Virginia Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 518, since the failure to give notice or hearing to other indispensable parties causes a direct injury

to petitioner. The controversy was left in an unsettled state in that the nullification of the contracts was ineffective against the other parties (*Barney* v. *Baltimore*, 73 U. S. 825, 6 Wall. 280, 285), who may yet seek enforcement thereof or damages against petitioner despite the Board's order. In any event, the absence of indispensable parties caused a failure of jurisdiction and the point may be raised by the Court *sua sponte*. *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 235.

III.

The Board's order disestablishing the Committee was not supported by substantial evidence. *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142, 147; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229; *National Labor Relations Board* v. *Columbian Enameling and Stamping Co. Inc.*, 306 U. S. 292, 299, 300; *National Labor Relations Board* v. *A. S. Abell Co.*, 97 Fed. (2nd) 951 (C. C. A. 4th); *National Labor Relations Board* v. *Lion Shoe Company*, 97 Fed. (2nd) 448, 454 (C. C. A. 1st); *Ballston Still-Water Co.* v. *National Labor Relations Board*, 98 Fed. (2nd) 758 (C. C. A. 2nd).

It was improper for the Circuit Court to order petitioner, depending upon the result of an election, to bargain with the Bakery and Confectionery Workers Union, since the employees had specifically ousted that Union as their bargaining representative by a written petition dated September 9, 1937. *Chesapeake & Ohio R. R. Co.* v. *Martin*, 283 U. S. 209; *Lomer* v. *Meeker*, 25 N. Y. 361.

Argument.

POINT I.

The Board had no jurisdiction to make findings of unfair labor practices against petitioner under Sections 8(1) and 8(2) of the Act in the absence of a proper charge.

Section 10(b) of the Act provides in part as follows:

> "*Whenever it is charged* that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint *stating the charges in that respect*, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *" (Italics ours.)

Under the Rules and Regulations of the Board, Series 1, as amended, in Article II, Section 1, it is provided, in substance, that a charge of unfair labor practices may be made by any person or labor organization; such charge may be withdrawn only with the consent of the Regional Director with whom it was filed or of the Board, and upon the withdrawal of any charge the Regional Director shall dismiss any complaint based thereon. Section 2 provides that the charge shall be filed in the Region where the alleged unfair labor practice has occurred or is occurring. Section 3 provides that the charge must be in writing, the original being signed and sworn to, and that there shall be three additional copies of

such charge filed. Section 4 provides that the charge shall contain the name and address of the person or labor organization making the charge, the name and address of the respondent, and a clear and concise statement of the facts constituting the alleged unfair labor practice. Section 5 states that after a charge has been filed, if it appears proper to the Regional Director, he shall issue a formal complaint in the name of the Board *stating the charges*, together with a notice of hearing, and that *a copy of the charge shall be annexed to the complaint*. Section 9 provides that if, after the filing of a charge, the Regional Director declines to issue a complaint, such action may be reviewed by the Board in Washington.

The full text of the Regulations referred to is set forth in the appendix.

Construing Section 10(b) of the Act and the Regulations, the Circuit Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Hopwood Retinning Co. Inc.*, 98 Fed. (2d) 97, 101 (C. C. A. 2nd), held:

> "This procedure is required as a prerequisite to the jurisdiction of the Board, and the complaint issued and the subsequent hearing must be in accord with the charge in an attempt to prove or rebut such charges. The Board should be an impartial administrator and must ascertain if there were unfair labor practices as charged. The Board cannot use its own initiative in respect to charging unfair labor practices."

It is apparent from the foregoing that the foundation of every proceeding before the Board for the prevention of unfair labor practices is the charge, and that the Board's complaint, the hearing thereafter held, and any order thereafter issued may not expand or enlarge the charge but that such complaint,

hearing and order are limited and confined to specific unfair labor practices alleged in the charge. If the Board acts with respect to unfair labor practices not charged, such action is necessarily beyond its authority.

In this case, the amended charge was executed on August 2, 1937 (R. 772) and was filed with the Board on August 13, 1937 (R. 868, 869). No other, further or additional charges were ever filed, nor was the charge of August 2, 1937 ever amended. The Board's complaint to a certain extent reflected the allegations of that charge and alleged the commission of various acts purporting to be unfair labor practices, such as petitioner's refusal to bargain with the Union on *July 29, 1937* and thereafter (R. 776); the unlawful formation of a labor organization on *July 16, 1937* (R. 777); and, commencing with *July 15, 1937*, the commission of other acts violative of employees' rights under the Act (R. 777). The complaint, likewise, was never amended.

Yet the astounding fact remains that the Board's decision and order, when finally issued on May 31, 1938, found that petitioner had committed unfair labor practices that had never been charged against it! The order directed petitioner to disestablish the labor organization known as the Collective Bargaining Committee of the National Licorice Company (R. 895) although admittedly that Committee had no existence prior to September 9, 1937 (R. 881), and directed the cancellation of contracts that admittedly were first negotiated on September 10, 1937 (R. 581) and then signed on that and subsequent days (R. 582, 583, 850).*

* The Board's brief in opposition to certiorari at page 29 concedes that "the charge in this case was filed before the Committee had been formed and long before the contracts were entered into."

Obviously, the charge of August 2, 1937 could not include within its scope practices alleged to be unfair when such practices had not yet occurred, nor could the Board's complaint enlarge the charge by specifying an unfair labor practice not originally charged. *National Labor Relations Board* v. *Hopwood Retinning Co. Inc.*, 98 Fed. (2nd) 97, 101.

The intention of Congress in the enactment of Section 10(b) of the Act is clear. The Board cannot act until a charge is made, and only then may it issue a complaint "stating the charges in that respect". By these words of limitation Congress denied to the Board a roving commission. It may not itself initiate charges nor can it complain against that which is not charged. Section 3 of Art. II of the Regulations follows the mandate of the Statute, by providing that the Board's complaint shall state "the charges".

Adherence to proper procedure cannot interfere with the efficient exercise of the Board's functions. The charge need not be particularized nor include evidentiary matter that normally is elicited upon a hearing. Amendments thereto are not prohibited, and, likewise, the complaint may be amended at any time prior to the issuance of an order. Section 10(b) of the Act. Within the general limits of the charge, the Board's order may be adapted to the situation disclosed by the evidence. The sole requisite under Section 10(b) is a charge that "a person has engaged in or is engaging in any such unfair labor practice" (listed in Section 8), which while easy of compliance, yet affords to the employer the protection granted by Congress of ascertainable limits to the scope of the proceeding against him.

The Circuit Court disposed of petitioner's contentions on this point by stating that "here no charge

could have included the company union and it was not necessary that it should" and that "the Board was within its powers in treating the whole sequence as one" (R. 913), a statement which is manifestly erroneous in view of the Statute, the Regulations and the principle enunciated in *Labor Board* v. *Hopwood Retinning Co. Inc.*, 98 Fed. (2nd) 97, 101.

POINT II.

The cancellation of petitioner's contracts with the Committee and with individual employees was improper.

The contracts involved here are tripartite instruments between petitioner, the Committee and numerous individual employees. The Board held that these agreements were individual contracts of employment with petitioner (Board's Decision, R. 895, 896). This is correct as to each employee, but the presence of the Committee as a party and the provisions governing its rights and duties establish also a collective agreement made with a representative of a class.

The Board's Lack of Power to Void Employment Contracts:

We appreciate that the Fifth Amendment, like the Fourteenth, "is not a guarantee of untrammeled freedom of action and of contract", and that "in the exercise of its power to regulate commerce, Congress can subject both to restraints not shown to be unreasonable". Congress has provided in the Act that if men strike in connection with a current labor dispute, they nevertheless remain employees, and that discharged employees may be reinstated. These are reasonable regulations imposed upon contractual re-

lationships well within the Congressional power. *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333, 347.

But it is another thing to say that the Act may be construed to confer upon the Board the authority to wholly extinguish contractual relationships. The Board's general authority conferred by Section 10(c)*, to require such affirmative action as will "effectuate the policies of the Act" is broad but it is not unlimited. *Labor Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 257.

In *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 235, this Court held:

> "Further, the Act gives no express authority to the Board to invalidate contracts with independent labor organizations. That authority, if it exists, must rest upon the provisions of Section 10(c). That section authorizes the Board, when it has found the employer guilty of unfair labor practices, to require him to desist from such practices 'and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act'. We think that this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor

* Sec. 10(c). * * * If upon all the testimony taken the Board shall be of the opinion that any person has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order."

"The power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act: The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence or violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair practices. Compare *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, supra.* Here, there is no basis for a finding that the contracts with the Brotherhood and its locals were a consequence of the unfair labor practices found by the Board or that these contracts in themselves thwart any policy of the Act or that their cancellation would in any way make the order to cease the specified practices any more effective."

It requires no great discernment to see that if the Board may destroy private contracts when in its opinion the policies of the Act would thereby be effectuated, under the same purported grant of authority it may likewise extend its dominion over labor relations without any limitation or restraint—to the adjustment of wage rates, hours of employment and working conditions—if in its opinion to do so would remove a source of industrial strife and thus effectuate the policies of the Act. The mere statement of the proposition demonstrates its absurdity. We submit, therefore, that the Board was never intended by Congress to have the right to condemn contracts of em-

ployment (*Consolidated Edison Co.* case, *supra*), and this conclusion is fortified by the ruling of the Chief Justice in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, that "the Act does not preclude such individual contracts as an employer might elect to make directly with employees."

To the same effect see:

National Labor Relations Board v. *The Sands Mfg. Co.*, 306 U. S. 332, 345;

National Labor Relations Board v. *Delaware-New Jersey Ferry Co.*, 90 Fed. (2nd) 520 (C. C. A. 3rd) certiorari denied 302 U. S. 738.

The Failure to Give Notice to the Committee or the Employees:

Petitioner contended before the Circuit Court that the Committee and each employee party to the contract were indispensable parties to the proceedings and entitled to legal notice thereof in view of the invalidation of their contracts. Nevertheless, the opinion of the Court is silent on this fundamental question, except insofar as the Court held "the situation was within the *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 58 S. Ct. 571, 82 L. Ed. 831, 115 A. L. R. 307, and not within *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 231-239, 59 S. Ct. 206, 83 L. Ed. , and the company union could be displaced without being made a party" (R. 912), a statement which demonstrates beyond doubt that the Court below misapprehended the basic nature of petitioner's contention.

Petitioner did not claim in the Circuit Court, and does not claim now that a labor organization dominated by the employer is entitled to notice of the proceedings which culminate in the employer being required to cease recognizing or supporting it. The rule to the contrary was announced by this Court in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 271. But in that case no question of contract was involved, and later the application of that rule in a case involving contract rights was forbidden. *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 233. The Circuit Court, however, treated all petitioner's arguments on the subject of lack of notice as though applicable only to the disestablishment of the Committee as a bargaining organization, and, in its opinion, made no reference to the rights of the Committee and the employees to notice and hearing in so far as their contracts were involved.

Here we have a contract executed with the Committee, and with employees who executed individual counterparts of such contracts. The benefits received by the employees under the contracts, such as the maintenance of an irreducible wage scale, vacations with pay, extra compensation for overtime, arbitration of disputes and the prohibition of strikes and lock-outs, are substantial property rights which are personal to each employee and may be individually enforced by him and by the Committee as well.

That the Committee and the employees were entitled to legal notice and hearing and were indispensable parties to the proceeding was settled definitely by the ruling of this Court in the *Consolidated*

Edison case (305 U. S. 197, 232, 59 S. Ct. 206, 218), as follows:

> "The Brotherhood and its locals contend that they were indispensable parties and that in the absence of legal notice to them or their appearance, the Board had no authority to invalidate the contracts. The Board contests this position, invoking our decision in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261. That case, however, is not apposite, as there no question of contract between employer and employee was involved. The Board had found upon evidence that the employer had created and fostered the labor organization in question and dominated its administration in violation of Section 8(2). The statement that the 'Association' so formed and controlled was not entitled to notice and hearing, was made in that relation. Id., pp. 262, 270, 271. It has no application to independent labor unions such as those before us. We think that the Brotherhood and its locals having valuable and beneficial interests in the contracts were entitled to notice and hearing before they could be set aside. *Russell* v. *Clark's Executors*, 7 Cranch 69, 96; *Mallow* v. *Hinde*, 12 Wheat. 193, 198; *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 235; *Garzot* v. *de Rubio*, 209 U. S. 283, 297; *General Investment Co.* v. *Lake Shore Railway Co.*, 260 U. S. 261, 285. The rule, which was applied in cases cited to suits in equity, is not of a technical character but rests upon the plainest principle of justice, equally applicable here. See *Mallow* v. *Hinde*, *supra*."

The Board may attempt to distinguish the *Consolidated Edison* case by pointing out that there the

labor organization involved was found by it not to be dominated or controlled by the company, whereas in this case the reverse is true. But this Court did not say that a company-dominated union is not entitled to legal notice and hearing when that union also possesses contract rights. The basis of the ruling in the *Pennsylvania Greyhound* case was that the order did not run against the company union and its presence was not necessary for appropriate action by the Board. That reason, under the principle of the *Consolidated Edison* case and other authoritative cases cannot govern a situation where the property rights of all parties to a contract are terminated by the Board's order.

If, however, this Court will decide that notice to the labor organization, under such circumstances need not be given, clearly the status of individual employee parties to the contracts is entirely different. Unquestionably, under the rule in the *Consolidated Edison* case each employee is entitled to notice and the right to a hearing, despite the disability under which his bargaining representative may suffer. Such disability of company control, if it should exist, cannot deprive employees, who themselves are under no such disability, of the constitutional right to notice and hearing of proceedings vitally affecting their interests.

In *Shields* v. *Barrow*, 17 How. 130, 140, this Court said in reference to persons who not only have an interest in the controversy but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a state that its final termination

may be wholly inconsistent with equity and good conscience:

> "A bill to rescind a contract affords an example of this kind. For, if only a part of those interested in the contract are before the court, a decree of recission must either destroy the rights of those who are absent, or leave the contract in full force as respects them; while it is set aside and the contracting parties restored to their former condition as to the others. We do not say that no case can arise in which this may be done; but it must be a case in which the rights of those before the Court are completely separable from the rights of those absent, otherwise the latter are indispensable parties."

At page 141:

> "* * * the circuit court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person, that complete and final justice cannot be done between the parties to the suit without affecting those rights. To use the language of this court in *Elmendorf* v. *Taylor*, 10 Wh. 167: 'If the case may be completely decided, as between the litigant parties, the circumstances that an interest exists in some other person, whom the process of the court cannot reach—as if such party be a resident of another state—ought not to prevent a decree upon the merits. But if the case cannot be thus completely decided, the court should make no decree.'"

In *Barney* v. *Baltimore*, 73 U. S. 825, 6 Wall. 280, 284, the Court held:

> "There is a class of persons having such rela-

tions to the matter in controversy, merely formal or otherwise, that while they may be called proper parties, the court will take no account of the omission to make them parties. There is another class of persons whose relations to the suit are such, that if their interest and their absence are formally brought to the attention of the Court, it will require them to be made parties if within its jurisdiction before deciding the case. But if this cannot be done, it will proceed to administer such relief as may be in its power, between the parties before it. And there is a third class, whose interests in the subject-matter of the suit, and in the relief sought, are so bound up with that of the other parties, that their legal presence as parties to the proceeding is an absolute necessity, without which the court cannot proceed. In such cases the court refuses to entertain the suit, when these parties cannot be subjected to its jurisdiction."

In *Mallow* v. *Hinde*, 12 Wheat. 193, 198, the Court said:

"In this case, the complainants have no rights separable from and independent of, the rights of persons not made parties. The rights of those not before the court lie at the very foundation of the claim of right by the plaintiffs, and a final decision cannot be made between the parties litigant without directly affecting and prejudicing the rights of others not made parties.

"We do not put this case upon the ground of jurisdiction, but upon a much broader ground, which must apply to all courts of equity, whatever may be their structure as to jurisdiction. We put it on the ground that no court can adjudicate directly upon a person's right, without

the party being actually or constructively before the court."

To the same effect see:

Gregory v. *Stetson*, 133 U. S. 579;
Employers Reinsurance Corp. v. *Bryant*, 299 U. S. 374, 381;
21 Corpus Juris, Equity, pages 273, 277, 282.

The Terms of the Contract Do Not Violate the Act:

The Board and the Circuit Court, while criticizing only a small portion of the agreement, ordered that the whole thereof be discarded. The part attacked is contained in the following paragraph (R. 854, 855):

"SEVENTH: Any Employee has the right to join any union of his own choosing or to refrain from joining any union. The Employees or any of them shall not and have not the right to demand a closed shop or a signed agreement by his Employer with any union. This does not in any way restrain the Employees from having a union representing them or advising them in collective bargaining, and the Employer has the absolute and unqualified right to hire or discharge any Employee or Employees for any reason and regardless of his or their affiliation or non-affiliation with any union. It is mutually understood and agreed that the Employer will not discharge Employees because of legitimate union activities conducted outside of company time or company property or because of affiliation with any union. It is further mutually agreed and understood that the collective bargaining committee or the Employees will not intimidate or

coerce employees and also will not solicit membership in any union on corporation time or plant property.

"A discharged Employee may submit to the Employer facts indicating that his discharge was unreasonable, and the Employer may at its discretion reinstate said Employee, it being the intention of the Employer that Employees be not unjustly discharged. It is strictly understood and agreed, however, that the question as to the propriety of an Employee's discharge is in no event to be one for arbitration or mediation and that any action of reinstatement, if any, will be taken voluntarily by the Employer if it deems such reinstatement advisable."

In the prior proceedings and in opposition to certiorari, the Board maintained that the provision that the propriety of an employee's discharge was not to be arbitrated or mediated and that reinstatement depended only upon the voluntary action of the employer was unlawful because the employee not only is precluded from raising through his representatives the reason for his discharge, but is also forced to accept the decision of petitioner on that question".

That petitioner's absolute right to decide questions of discharge is not infringed by the Act is well settled by decisions of this Court. In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, it was held:

"The Act does not interfere with the normal exercise of the right of the employer to select its employees *or to discharge them.*" (Italics ours.)

In *The Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132, the Court held:

> "The Act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees."

Furthermore, there is nothing in the Act, nor any principle of common law, which requires an employer to mediate or arbitrate a question of discharge with representatives of employees.* Indeed, the particular provision under discussion gave nothing more to the employer than it already had under common law. It was inserted, no doubt, to make clear that the employer's inherent right of discharge was to remain unimpaired, and that the arbitration clauses were not, by implication or construction, to extend to the subject of discharges.

In addition, the Board denounces the provision in paragraph "Seventh" of the contract whereby the employees waived a closed shop and a signed agreement with any union. This, said the Board on certiorari, destroys the "inducement to union membership" and interferes with "the development of genuine union organization". By these words the Board inferentially makes a distinction between na-

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* Report (No. 573) of Senate Committee on Education and Labor, May 2, 1935, 74th Cong. First Sess., p. 2:

> "Prudence forbids any attempt by the Government to remove all the causes of labor disputes. Disputes about wages, hours of work, and other working conditions should continue to be resolved by the play of competitive forces, so far as the provisions of codes of fair competition are not controlling. This bill in no respect regulates or even provides for supervision of wages of hours, *nor does it establish any form of compulsory arbitration.*" (Italics ours.)

tional labor unions and independent plant unions, to the disparagement of the latter. But a union limited to the employees of a single employer is as legal as any other. *Ballston Still-Water Co.* v. *Labor Board*, 98 Fed. (2nd) 758, 762 (C. C. A. 2nd). At any rate, the criterion of illegality is the Act, not the fanciful conclusions the Board may choose to draw as to the ultimate effect of any provision of the contract. And there is no hint in the Act of any requirement for either a closed shop or a signed agreement with a union.

> "In other words, the bill does nothing to facilitate closed-shop agreements or to make them legal in any state where they may be illegal; * * *"
>
> *Report No. 573 Senate Committee on Education and Labor, May 2, 1935, 74th Cong., First Sess., page 11.*

> "The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'refusing to make a collective contract and hiring individuals on whatever terms the employer 'may by unilateral action determine'."
>
> *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, 301 U. S. 1, 45.

If it is not unlawful under the Act for an employer to refuse a closed shop or a signed agreement with a union, or for employees to accede to that view, certainly the mere expression in a contract of the parties' position in that regard cannot stamp that contract as illegal.

The Circuit Court's Opinion on the Contracts:

The Circuit Court did not follow the Board's interpretation of the contracts. We gather from its opinion (R. 911) that the contracts were deemed unlawful for two reasons which may be summarized as follows:

(1) That the stipulation of the employees and the Committee (R. 854) not to propose changing to a closed shop or to demand a signed contract with any Union is unlawful for the reason that "the right to propose the change is secured by statute as part of the right to negotiate" (R. 911).

(2) The right of a discharged employee to submit to the employer facts indicating that his discharge was unreasonable (R. 855) "suggests that the company union shall not act for him" (R. 911).

These objections are patently erroneous. The right of a discharged employee to submit to the employer facts indicating that his discharge was unreasonable is expressly secured by Section 9(a) of the Act which provides that any *individual employee* or group of employees shall have the right at any time to present grievances to their employer. See also, *National Labor Relations Board* v. *Union Pacific Stages* (C. C. A. 9th), 99 Fed. (2nd) 153, 164.

The other objection is equally without merit. It is true that under the statute employees, through their chosen representatives, have the right to bargain collectively, or, as the Court below said, have the "right to negotiate". But the right to negotiate is meaningless and futile unless considered as a means to an end, namely, the consummation of an

agreement. *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 236. And such agreements must, by their inherent nature, definitely settle and fix the respective rights, duties and obligations of the parties with that degree of finality which is the underlying reason for entering into contractual relationships. To the extent that employees agree with their employer, they say in effect: "We will negotiate no further on this, since it is settled for the duration of our agreement", and such arrangements, allaying disputes and harmonizing labor relationships, are encouraged rather than precluded by the policy of the Act. *Consolidated Edison Company* v. *Labor Board*, 305 U. S. 197, 236, 237.

The Contracts Were Not Void Because of the Circumstances Attending Their Inception:

The Board claims also that the contracts are invalid, not only by reason of their terms, but because they were the outcome of negotiations with a labor organization, found by it to be dominated by the company as well as because of coercion and intimidation practiced upon employees.

Aside from the fact, as will be shown later, that the Committee was not dominated by petitioner but was a free organization, the Board in its zeal overlooks the legal effect of an individual contract. Company control of a bargaining agent, if it exists, cannot annihilate the vested rights acquired under a contract by the principals of the agent, who in this case are the employees. There is no presumption that the signature of an employee is meaningless and without legal effect, or that he did not, by signing, make the contract his contract in every sense, thus ratifying and confirming all that was negotiated by his agent.

As to "coercion" or "intimidation", this was simply an unwarranted assumption, unsupported by any evidence, no less substantial evidence. We re-print in the footnote below the portion of the testimony of Carmela Tesora, a Board's witness, containing the sole evidence of "coercion" on which the Board relies (R. 374-376)*.

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*"Q. Before you signed this paper, was there any conversation had between you and Mr. Sandford about it? A. No, Mr. Sandford said the contracts were here. It was up to us what we wanted to do, and he walked out.

Q. Who was in the room? A. Just the shop committee, and the rest of the girls.

Q. In other words, the shop committee was in the room when you and Mr. Sandford talked? A. Yes.

Q. Was there any other conversations had between you and any of the shop committee after Mr. Sandford went out of the room? A. Yes, there was, but I didn't pay any attention to it. I was talking to some of them.

Q. Did they tell you what would happen if you didn't sign the paper? A. I don't get that.

Q. Didn't anyone say to you—that you—that if you didn't sign the paper that you would not be securing your job? A. No, not to me, they didn't tell that.

Q. Who did they tell it to? A. I don't know. You see, I wasn't bothering with any of them. I just read off my own.

Q. Well, didn't someone speak to Mr. Sandford as to what the effect would be if you didn't sign the contract?

Mr. Mann: I object to that. 'Didn't someone speak to Mr. Sandford?'

The Witness: He said that before. He said, that he would not protect our jobs and that we would not get that 5% if we didn't sign.

Q. (By Mr. Sklar.) Who said that? A. Mr. Sandford.

Mr. Sklar: That is all. You may inquire.

Cross examination:

Q. (By Mr. Mann.) Did you sign that paper, Miss Tesora? A. Yes.

Q. What day? A. The day we went in, September 20th.

Q. I am now talking about you personally. Did anybody force you to sign the paper? A. No.

Frank J. Garone, on cross examination, testified (R. 765, 766):

"Q. You signed a contract, did you not? A. Signed a contract?

Q. Yes. A. Yes, sir, I did.

Q. Nobody forced you to sign that contract? A. Nobody forced me.

Q. You signed it voluntarily, of your own free

(Footnote continued from preceding page.)

Q. Did anybody threaten that anything would happen if you didn't sign the paper? A. That my job wasn't protected.

Q. Who said that? A. Mr. Sandford.

Q. In other words, that you would not get the 5% increase? A. Yes.

Q. You knew that paper—you knew what that paper was, didn't you? A. Yes.

Q. It was a contract? A. Yes.

Q. You signed it? A. Yes.

Q. Mr. Sandford signed it? A. Yes.

Q. On behalf of the company? A. Yes.

Q. Was there any other signatures on it? A. Shop committee's.

Q. Do you know the names of those people? A. Bertha Rossman, Jenny Marolla, Louis Moscola, Bill McCann and some girl, I don't know—she is a new girl—I don't know her name. I know only her first name; her name is Anna.

Trial Examiner Korey: Anna Dunn?

The Witness: No, it is not Anna Dunn, one of the new help.

Q. (By Mr. Mann.) Did you read that paper, Board's Exhibit 10 for Identification, carefully, before you signed it?

Trial Examiner Korey: He means this contract—this paper here (indicating).

The Witness: Yes.

Q. (By Mr. Mann.) You read that before you signed it? A. Certainly.

Q. You read English well? A. Yes.

Q. You understood everything that was in there? A. Yes, of course I did.

Q. You signed it voluntarily? A. Yes, I did.

Q. Nobody forced you to sign it? A. No."

will? A. The rest of them signed it, I guess it was, you know what I mean, I guess you had to sign it, something, everybody else signed it, and I supposed I had to sign, myself.

Q. Nobody forced you to do it? A. Nobody forced me."

Aparf from the numerous other reasons in this case precluding the Board from disrupting the contracts, elementary principles of justice and orderly procedure require that as a prerequisite to the enforcement of the drastic penalty imposed by the Board, each and every person who claims to have been coereed must appear, request rescission, tender back the benefits received and give evidence of a kind that would impel a court of equity to act.

There was not even an attempt to meet these fundamental conditions. Practically all the employees remained in ignorance of the entire proceeding. Not a single member of the Committee testified. Both Tesora and Garone, the only employees who testified in regard to the contract, stated that they signed voluntarily and without coercion (R. 376, 380, 381, 765, 766). *There is not a word in the record of the circumstances surrounding the execution of the contracts by the remainder of the employees*, except that the Committee distributed the contracts for signature (R. 587-589). Tesora's remark about "job protection" relied on by the Board as evidence of pressure by petitioner, was later explained by her as meaning that she would not receive the 5% increase in wages provided for in the contract unless she became a signatory thereto (R. 375 at fol. 1125).

Where, then, is the *substantial evidence* that is required to support the Board's finding of coercion? *Washington, Virginia & Maryland Coach Co.* v.

National Labor Relations Board, 301 U. S. 142, 147; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229; *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 93 F. (2d) 985, 989; *National Labor Relations Board* v. *Columbian Enameling & Stamping Co., Inc.*, 306 U. S. 292, 300.

The Relation of the Contracts to the Policy of the Act:

It is clear, we believe, that the particular objections to the contract made by both the Board and the Court below cannot survive the test of legal analysis. There remains for consideration the question whether any of the terms of these contracts violate the policy of the Act. We quote a few well-established principles controlling this phase of the argument.

> "The authorities all agree that a contract is not void as against public policy unless it is injurious to the interests of the public, or contravenes some established interest of society."
>
> *Hartford Fire Ins. Co.* v. *Chicago M. & St. P. R. Co.*, 20 Sup. Ct. 33, 175 U. S. 91, 106, 44 L. Ed. 84.

> "It must not be forgotten that the right of private contract is no small part of the liberty of the citizen, and the usual and most important function of courts of justice is to maintain and enforce contracts, than to enable parties thereto to escape from their obligation on the pretext of 'public policy', unless it clearly appear that they contravene public right or the public welfare."
>
> *Baltimore & O. S. W. R. Co.* v. *Voight*, 20 Sup. Ct. 385, 387, 176 U. S. 498, 505, 44 L. Ed. 560.

The public policy of a nation or state must be determined by its Constitution, laws and judicial decisions, not by the varying opinion of laymen, lawyers or judges as to the demands or interests of the public.

Southern Ry. Co. v. *Blunt & Ward*, 155 Fed. 496, 497;

U. S. v. *Trans-Missouri Freight Ass'n*, 58 Fed. 69, 7 C. C. A. 15, 24 L. R. A. 73;

Swann v. *Swann*, 21 Fed. 299;

Hartford Fire Ins. Co. v. *Chicago, M. & St. P. Ry. Co.*, 70 Fed. 201, 17 C. C. A. 62, 30 L. R. A. 193; s. c., Sup. Co. 33, 175 U. S. 91, 44 L. Ed. 84.

Tested by these principles, we submit that the contract in this case, far from being in contravention of the interests of the public or of the policy of the Act, is a praiseworthy embodiment of those objectives which the Act was designed to secure, namely, the consummation, through collective bargaining, of an agreement stabilizing wage rates and working conditions—thus eliminating a chronic source of industrial strife and unrest.

"Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife. This purpose appears to be served by these contracts in an important degree. Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce. They contain no terms which can be said to 'affect commerce' in the sense of the Act so as to justify their abro-

gation by the Board. The disruption of these contracts, even pending proceedings to ascertain by an election the wishes of the majority of employees, would remove that salutary protection during the intervening period."

Consolidated Edison v. National Labor Relations Board, 305 U. S. 197, 237.

It is further maintained by the Board that under these contracts the employees have "lost" or been "deprived" of certain rights guaranteed them by Section 7 of the Act.* Disregarding the suggestion of coercion carried by these terms—for we have demonstrated that there was no coercion—we cannot pass unchallenged the unsound reasoning implicit in these declarations, namely, that an employee may not, if he chooses to do so, waive his rights under Section 7. The proposition is really academic because the employees here did not give up a single right or benefit granted by that section.

It is elementary that a person may waive a rule of law or a statute, or even a constitutional provision enacted for his benefit or protection, where no considerations of public policy are involved. *Sentenis v. Ladew*, 140 N. Y. 463, 466; 67 Corpus Juris 307, sec. 8. Since Section 7 is permissive and not mandatory, obviously, it is no different and no holier in relation to public policy than the thousands of other laws designed by Congress and State legislatures to afford certain protection or benefits to certain persons or classes of persons, which may, nevertheless,

* Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

be waived by those sought to be benefitted without offending public policy.

The policy and provisions of the New York State Labor Relations Act* are in substance precisely the same as the national policy and the National Labor Relations Act (see dissenting opinion of Mr. Justice Butler in *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 239). Construing the State Act, the New York Labor Relations Board held:

> "While it endows workers with complete freedom to exercise the right of self-organization and to designate representatives for the purposes of collective bargaining, if they desire to do so, it is an obvious corollary that the Act likewise endows workers with equally complete freedom to refrain from self-organization and to declare that such is the desire or preference of the majority. The Act enunciates a right. It does not impose an obligation."
>
> *In re Hotel St. George Corporation and Hotel Residence Club Workers Industrial Union of Brooklyn, Local 28, Case No. SE 3353, Oct. 10, 1939.*

Therefore, even if we indulge in the assumption that under the terms of these contracts the employees did waive or relinquish some right or benefit conferred by Section 7, such action is not unlawful and supplies no warrant for the Board's interference.

The Concession of the Attorneys Respecting the Contracts:

At the hearing, while a witness was being cross examined, the following colloquy (R. 380-381) took place

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* Laws of 1937, Chapter 443, effective July 1, 1937; Article 20 of the Labor Law.

between Mr. Sklar, attorney for the Union, Mr. Graham, attorney for the Board, Mr. Mann, attorney for the company, and the Trial Examiner:

> "Mr. Sklar: Objected to, Mr. Examiner, on the ground that THIS CHARGE APPLIED TO AUGUST 2ND AND HAS NOTHING TO DO WITH THE CONTRACT OF SEPTEMBER 20TH.
>
> Mr. Mann: It talks about individual contracts, and they offered in evidence a contract.
>
> Mr. Sklar: Those contracts referred to are the ones mentioned by Mr. Sanford on July 29th.
>
> Mr. Graham: IN ORDER TO GET THE RIGHT EFFECT, WE ARE GOING TO LET THESE IN. COMPLAINT EMBODIES NONE OF THESE CONTRACTS.
>
> Mr. Mann: May I ask on the record whether they want to go into this question of contracts under their amended charge. If not, let's forget about it.
>
> (482) Trial Examiner Korey: I have ruled you can ask the question. Please continue."

The contract of September 20th referred to by Mr. Sklar appears in the record as Board's Exhibit 10 (R. 851-857) (admitted R. 385), and is a facsimile of the many contracts executed during the period from September 10, 1937 to September 20, 1937.

It is to be noted that Mr. Sklar's statement that the charge of August 2nd has nothing to do with the contract of September 20th coincides in effect with petitioner's claim outlined in Point I of this brief that the Board lacked jurisdiction, on the basis of charge sworn to on August 2, 1937, to adjudicate with respect to either the Committee or the contracts.

While, possibly, the statements quoted do not assume the stature of a formal stipulation, they are

at least concessions that the contracts were not in issue, and the Board was bound to honor and not repudiate them. *Morgan* v. *U. S.*, 304 U. S. 1, 22.

> "'In the trial of a cause, the admissions of counsel, as to matters to be proved, are constantly received and acted upon. They may dispense with proof of facts for which witnesses would otherwise be called. They may limit the demand made or the set-off claimed. Indeed, any fact bearing upon the issues involved, admitted by counsel, may be the ground of the Court's procedure, equally as if established by the clearest proof.'"
>
> *Oscanyan* v. *Winchester Repeating Arms Co.*, 103 U. S. 261, 263.

See also:

> *Shanley, et al.* v. *Bowers* (C. C. A. 2nd), 81 Fed. (2nd) 13, 16.

However, the Board, in its decision, ignored the concession of the attorneys and has consistently sought to avoid the consequences thereof. The opinion of the Circuit Court made no mention of the concession or its effect, although the point was strongly urged by petitioner in the proceedings below.

The Objection of Lack of Notice to Employees Was Seasonably Urged By Petitioner Before the Board. Petitioner May Raise the Point Since the Board's Defective Procedure Causes a Direct Injury to Petitioner.

In opposition to certiorari, the Board stated that the petitioner's contentions relative to lack of notice and hearing are not available now because they were not raised until the case reached the Circuit Court

and Section 10(e) of the Act provides that no objection that has not been urged before the Board, its member, agent or agency, shall be considered by the Court.

Petitioner sharply disputes this statement. At the conclusion of the hearing, petitioner's counsel submitted a memorandum to the Trial Examiner, an agent of the Board, in which the following appeared:

At page 39:

> "Of the 132 employees who signed Board's Exhibit 10, not one has appeared and asked that his contract be cancelled."

At page 41:

> "The rule is well established that if a party is necessary or indispensable, it must be cited as a party. Omission of an indispensable party is a jurisdictional defect.
>
> *Camp* v. *Gress*, 250 U. S. 308;
> *Caldwell* v. *Taggart*, 4 Pet. 190, 202;
> *Gregory* v. *Stetson*, 130 U. S. 570;
> *Shields* v. *Barrell*, 17 How. 129."

In the statement of exceptions to the Trial Examiner's Intermediate Report, petitioner stated (R. 835):

> "In this connection, it should be noted that not one employee of all those who signed these contracts was produced by the Board to testify that either he or she was coerced into signing it, or that he or she was desirous of having such contract cancelled."

In the same document petitioner excepted to the Trial Examiner's recommendations for cancellation

of the contracts on the ground "that said recommendations are contrary to law, and not supported by the evidence adduced upon the hearing" (R. 835).

The foregoing excerpts show plainly that the Board was seasonably apprised of the nature of petitioner's objection; hence Section 10(e) of the Act does not apply.

Likewise on certiorari, the Board claimed that since petitioner had itself received proper notice and hearing, it may not complain of the denial thereof to its employees.

The argument is untenable. Petitioner is not endeavoring to protect rights of other persons as to matters in which it has no legal interest. Compare *Virginia Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 558. On the contrary, upon enforcement of the order, the Board's original defective procedure causes such a substantial injury to petitioner in a legal sense that it has every right to raise the point.

What the Board struck down were contracts involving mutual rights and liabilities; inseparable and indivisible. The nullification to be effective must apply with equal force upon all parties to it. *Shields* v. *Barrow*, 17 How. 130, 140, 141; *Mallow* v. *Hinde*, 12 Wheat. 193, 198. Were the employees bound by the Board's order of cancellation? Clearly not. Necessary and indispensable parties can be bound by no decree to which they are not parties. *Barney* v. *Baltimore*, 73 U. S. 825, 6 Wall. 280, 285.

So that the fantastic, anomalous result of the Board's order is that petitioner is forbidden to exercise any rights under contracts which yet remain

in full force and effect in favor of the other parties thereto. Petitioner, under penalty of punishment for contempt, must cancel said contracts, but upon so doing is rendered vulnerable to employees and the Committee in a multiplicity of suits for damages for the breach thereof, or for specific performance or other rights of action. Is there any doubt then that petitioner is vitally and adversely affected by the non-joinder of the other parties, and may protest on that ground, not for the benefit of such others, but as a party thereby aggrieved in its own right?

Furthermore, the absence of indispensable parties resulted in a failure of jurisdiction on the part of the Board (*Employers Reinsurance Corp.* v. *Bryant*, 299 U. S. 374, 381; *Mallow* v. *Hinde*, 12 Wheat. 193, 198; *Shields* v. *Barrow*, 17 How. 130, 141; *Barney* v. *Baltimore*, 6 Wall. 280, 73 U. S. 825), and the point can be considered by the Court, *sua sponte*, even if not raised by the pleadings or suggested by counsel. *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 235.

POINT III.

There was no substantial evidence to sustain the Board's order dis-establishing the Committee; it was error for the Circuit Court to order petitioner to bargain with the Union following an election.

The Court below found that the evidence of domination was "somewhat inconclusive. The strike had failed and it might well be that the men were 'fed up' with the old union; a genuine company union was at least a possible outcome" (R. 911). Nevertheless, and despite its doubts, the Court sustained the Board and disestablished the Committee. Petitioner sub-

mits that "somewhat inconclusive" evidence of domination, far from attaining the requisite standard of substantiality, was in fact no evidence whatever, and the Circuit Court should have so found.

The fundamental purpose of Section 8(2) of the Act, providing that it shall be an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization, is to prevent the employer from sitting at both sides of the bargaining table, thereby reducing the process of collective bargaining to a sham and a mockery. Congress believed that only so long as labor organizations remained free of control by the employer could they effectively perform their functions as bargaining representatives.

This being so, an inquiry into the manner in which the Committee discharged its office of bargaining agent would furnish persuasive, if not conclusive, evidence on the question as to whether it was dominated by the company, or not. Was it a mere puppet in the hands of petitioner during the bargaining negotiations on September 10, 1937 as the Board contends, or did it deal at arms length with the intention and purpose of securing every possible advantage for the employees?

The answer is found in these conspicuous facts:

1. The Committee, while bargaining, sought to exact from petitioner the utmost in benefits for employees (R. 581, 582, 584, 697, 706-710).

2. The outcome of the collective bargaining was a written contract (R. 850-857) effective until July 10, 1940 (R. 857).

3. The contract required petitioner to grant a 5% increase in wages (R. 852), an 8 hour day and a 5 day week (R. 852), time and one-quarter to

specified classes of employees for overtime (R. 853) and a one week vacation with pay (R. 853). Petitioner, until July 10, 1938, was deprived of the right to reduce wages below the wage scale established in the contract (R. 855), and forfeited the right, even after such date, to make any unilateral adjustment in wages, hours, vacations and working facilities since, unless the Committee approved, the disputed items must be submitted to arbitration. Conversely, the Committee could propose changes in these matters, which if not agreed upon, were to be submitted to an arbitrator whose decision would be final and binding on all parties (R. 855, 856).

Convincing proof of the integrity and independence of the Committee may alone be found in the wresting of these important concessions and benefits from petitioner; a circumstance whose striking significance overwhelms those trifling incidents and innuendoes relied on by the Board as evidence of domination.

But the burden rested on the Board to prove a violation of Section 8(2), not on petitioner to disprove it, and the Board's attempt to do so can only be described as pathetic. We have previously narrated those facts which culminated in the signing of the petition (R. 866*a*) by the employees, said petition having been admitted into evidence without objection (R. 575). That petition, dated September 9, 1937, and signed by 118 out of about 140 employees, is clear and specific. It notified the management of the election of a committee of eight persons as the employees' representatives for collective bargaining, and that the authority vested in that committee "supersedes any authority that any of the undersigned may have given to any other group, organization or individual, and that no one except the collective bargaining committee consisting of our fellow work-

ers is authorized to represent us in collective bargaining".

Upon the execution of this document on September 9, 1937, the Bakery and Confectionery Workers International Union lost its status as exclusive bargaining agent and in its place the Committee became empowered to bargain collectively with petitioner on behalf of the employees. Section 9(a) of the National Labor Relations Act.

The Board, however, refused to take the petition seriously, or, apparently, to believe it possible that employees would voluntarily sever their connection with the Union, even though the Union's benefactions to the employees thus far had consisted in the carrying on of a strike and in compelling them to march on picket lines for over three weeks (R. 526) without payment of strike benefits (R. 129). But notwithstanding the suspicions with which the Board may regard this document, its findings are not conclusive unless supported by substantial evidence. *Washington, Virginia & Maryland Coach Co.* v. *Labor Board*, 301 U. S. 142, 147; *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 229. Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. "It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *Consolidated Edison Co. of New York* v. *National Labor Relations Board, supra*, and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. *Labor Board* v. *Columbian Enameling & Stamping Co., Inc.*, 306 U. S. 292, 300.

Prima facie, the petition ousted the Union from its

role as bargaining agent, with the Committee supplanting the Union, and the burden of proving otherwise rested on the Board. *National Labor Relations Board* v. *A. S. Abell Co.*, 97 Fed. (2nd) 951, 957 (C. C. A. 4th).

A like situation in which employees circulated a petition and organized a committee to represent them in dealings with their employer was presented in *National Labor Relations Board* v. *A. S. Abell Co.*, 97 Fed. (2nd) 951, 957 (C. C. A. 4th). The Court held:

> "There is, however, no justification for the position that spontaneous action on the part of the men is so improbable as to warrant the inference that it was inspired by the management."

If the Board suspected that the Committee was dominated by petitioner, or that the latter had a hand in its formation, the logical witnesses to prove these facts, if such facts existed, would naturally be those persons who composed the Committee as well as some of the 118 employees who signed the petition. Yet, the indisputable fact remains that not one of such persons was called or gave any testimony at the hearing, and there is not a shred of evidence in the record which indicated, at the hearing, that the validity of the petition as an expression of the workers' choice was ever assailed or impeached in the slightest degree. The proof was all the other way, since it was not denied that the first impulse for the formation of the Committee came from employees who were "fed up" with the Union (R. 526); that petitioner refused to deal with them unless a majority of the employees signified their assent; and that when petitioner's president dictated the form of the petition, he did so at the request of the employees (R. 576). Compare,

Railway Clerks Case, 281 U. S. 548, 560; *Labor Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.

In the case of *National Labor Relations Board* v. *Lion Shoe Company*, 97 Fed. (2nd) 448 (C. C. A. 1st), the situation was quite similar to the one at bar. Employees had approached the management and asked if it would deal with them if they formed "an independent, legitimate labor union with representatives of all departments in the factory represented." After a conference, contracts were typed in the office of the employer. The Court held, at page 454:

> "The fact that it was finally typed in the office of the respondent is also suggested in the Board's decision as evidence of domination by the respondent, which discloses the limits to which the Examiner and the Board went in drawing conclusions of domination. Obviously no weight could possibly be properly given to these facts as showing domination."

and at page 458:

> "* * * there would appear to be nothing in the Act that prevents an employer from entering into an agreement with a labor organization formed of old employees, on whatever terms may be agreed upon, no unfair labor practice being used or domination shown."

In *Ballston Still-Water Co. Inc. v. National Labor Relations Board*, 98 Fed. (2nd) 758, 762 (C. C. A. 2nd), the Court held:

> "A union limited to the employees of a single employer is as legal as any other, and we know of no rule or law that forbids the employer to permit his employees to solicit membership during working hours, provided he does not withhold a

like privilege from the opposition and exerts no pressure upon employees to join the union."

The Board, in its decision, ordered petitioner to bargain with Bakery and Confectionery Workers International Union (R. 895, 896), thereby giving no heed or effect to the employees' views, as evidenced by the petition. The Circuit Court, however, did not go so far. It ordered an election to determine whether the Union is still the representative of the majority of the employees (R. 912, 915, 916), but in so doing it likewise gave no effect to the petition. The authenticity of that petition could only be impugned by substantial evidence (not by trivialities such as typing in petitioner's office) before it could be arbitrarily disregarded. In the absence of such substantial evidence the Board and the Court below were bound, for judicial purposes, to give effect to this uncontroverted written exhibit according to its terms (*Chesapeake & Ohio R. R. Co.* v. *Martin*, 283 U. S. 209; *Lamer* v. *Mecker*, 25 N. Y. 361), and the failure so to do was error.

CONCLUSION.

The decree of the Circuit Court of Appeals for the Second Circuit granting enforcement of the order of the Board should be reversed in all respects; and the findings, conclusions, decision and order of the Board should be in all respects annulled and set aside.

Respectfully submitted.

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Appendix.

Applicable Provisions of the National Labor Relations Act

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

"Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to Section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

"Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of col-

lective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

"SEC. 10.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling."

Applicable Provisions of the Rules and Regulations of the Board, Series 1, as Amended and Effective April 27th, 1936 (1 L. R. R. Manual 814)

"ARTICLE II.

"Procedure Under Section 10 of the Act for the Prevention of Unfair Labor Practices

Charge

"Section 1. A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization. A charge may be withdrawn only with the consent of the Regional Director with whom such charge was filed or of the Board. Upon withdrawal of any charge, the Regional Director shall dismiss any complaint based thereon.

"Sec. 2. Except as provided in Section 37 of this Article, such charge shall be filed with the Regional Director for the Region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more Regions may be filed with the Regional Director for any of such Regions.

"Sec. 3. Such charge shall be in writing, the original being signed and sworn to before any notary public or any agent of the Board authorized to administer oaths or acknowledgments. Three additional copies of such charge shall be filed. A blank form for making a charge will be supplied by the Regional Director upon request.

"Sec. 4. Such charge shall contain the following:

(a) The full name and address of the person or labor organization making the charge.

(b) The full name and address of the person against whom the charge is made (hereinafter referred to as the 'respondent').

(c) A clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence.

"Sec. 5. After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the 'parties to the proceeding') a formal complaint in the name of the Board stating the charges and containing a notice of hearing before a Trial Examiner at a place therein fixed and at a time not less than five days after the service of the complaint. A copy of the charge shall be attached to the complaint.

"Sec. 9. If, after the charge has been filed, the Regional Director declines to issue and cause to be served a complaint, the person or labor organization making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director.

"Sec. 37. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge to be filed with it, in Washington,

D. C., or may, at any time after a charge has been filed with a Regional Director pursuant to Section 2 of this Article, order that such charge, and any proceedings which may have been instituted in respect thereto—

(a) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(b) be consolidated for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same region; or

(c) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in or transferred to such other Region, or for any other purpose.

The provisions of Sections 3 to 31, inclusive, of this Article shall, in so far as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this Section, be reserved to and exercised by the Board. After the transfer of any charge and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this Section, the provisions of Sections 3 to 36, inclusive, of this Article, shall apply to such charge and such proceeding as if the charge had originally been filed in the Region to which the transfer is made."

IN THE

Supreme Court of the United States

October Term, 1939.

No. 272.

NATIONAL LICORICE COMPANY,

Petitioner,

—against—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONER'S REPLY BRIEF.

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THE COURT PRESS, N. Y. C.

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PETITIONER'S REPLY BRIEF.

Two of the important questions presented for determination on this proceeding are whether there was any substantial evidence to support the Board's finding (a) that the Committee was sponsored or dominated by petitioner and (b) that the execution of the individual contracts by the employees was induced by intimidation or coercion practiced by petitioner upon them. We demonstrated in our main brief that there is no evidence to support such findings. The issue thus squarely tendered was to be met by the Board. Our adversary's brief discloses that it has not been met but studiously evaded. The drafts-

man of that brief adopts the technique of *assuming the evidence to exist*, and then by the frequent and unjustifiable use of words such as "illegal interference", "illegal restraints", "illegal limitations", "unlawful attempts", and other prejudicial statements endeavors to create a sinister impression of petitioner's conduct which any impartial consideration of the evidence would utterly reject. A typical example is shown by the footnote on page 23 of the Board's brief to the effect that the signing of the contracts was "a condition of re-employment" of the returning employees. Not only is there not the slightest evidence in the record to support this finding, but the evidence discloses exactly the contrary. Mr. Healey, petitioner's assistant secretary, gave the following *uncontradicted* testimony (R. 585):

> "We also wanted them to know thoroughly—we wanted them to have every man in the plant understand that the signing of this contract was optional. That the continuation of their employment was in no way predicated upon the signing of the contract and that if they (did) or did not, they would not be discriminated against in any way, shape or form."

Further, the record shows that the contract was not negotiated until September 10th, 1937 (R. 697). Prior thereto, and from August 25, 1937 to September 9th, 1937, exactly 109 employees, a substantial majority, had been re-employed (R. 565). Manifestly, the re-employment of those persons could not have been conditioned upon their signing of contracts that were not even in existence at that time.

Likewise, it should be noted that the contract in the present case is not a closed shop contract. No

employee is required, as a condition of employment, to become a party to the labor organization known as the Collective Bargaining Committee of the National Licorice Company (R. 850-857). The Board's finding that the signing of the contracts was a condition of re-employment (R. 884) is another illustration of a finding made in the teeth of the substantial and uncontradicted evidence.

The Alleged Violation of Section 8(5) of the Act in Failing to Bargain With the Union.

The Board discusses in minute detail the bargaining negotiations conducted by petitioner with the Union during July of 1937. That discussion can serve no purpose, since on this review there is no question before the Court as to whether petitioner committed an unfair labor practice by refusing to bargain collectively with the Union under Section 8(5) of the Act. The Circuit Court did not enforce the Board's order directing petitioner to bargain with the Union. It ordered an election to determine whether the Union still represents the men, and if the Union loses the election petitioner is not required to bargain with it (R. 912, 915, 916). The Board has filed no cross-petition for review of this provision in the order of the Circuit Court. Therefore, the most that the Board can hope to receive from this Court is an affirmance of the Circuit Court's order directing the election; hence the mass of evidence in the Board's brief relating to the bargaining serves no purpose but to confuse the issues (see Petitioner's Main Brief, p. 11).

The Board's Defective Charge and Complaint Precluding Any Adjudication Under Sections 8(1) and 8(2) of the Act.

At pages 65, *et seq.* of its brief, the Board discusses petitioner's Point I—the question involving the Board's lack of power to make any order concerning either the September Committee or the September contracts, on the basis of a charge executed on August 2nd, 1937. The Board's points of opposition, with petitioner's replies thereto, are as follows:

First: That petitioner's claim on this subject was not urged before the Board and hence Section 10(e) of the Act precludes consideration thereof by the Court.

We assert that this objection was specifically called to the Board's attention and that it had a full opportunity to correct its erroneous procedure. The record shows (R. 380-381) that while petitioner's counsel was interrogating a witness concerning the contract, the following appeared:

> "Mr. Sklar: Objected to, Mr. Examiner, on the ground that this charge applied to August 2nd and has nothing to do with the contract of September 20th.
>
> Mr. Mann: It talks about individual contracts, and they offered in evidence a contract.
>
> Mr. Sklar: The contracts referred to are the ones mentioned by Mr. Sanford on July 29th.
>
> Mr. Graham: In order to get the right effect, we are going to let these in. Complaint embodies none of these contracts."

Section 10(e) of the Act does not require the objection to be framed in any particular form. Obviously, the requirements of the statute are fulfilled if the matter is called to the attention of the Board, or its agent, during the course of a colloquy or debate of counsel, as was done in this case. Mr. Sklar had distinctly stated that the charge "applied to August 2nd and has nothing to do with the contract of September 20th", and the clear import of that statement is that any occurrences or matters occurring subsequent to the date of the charge could not be the subject of action by the Board. This is in exact conformity with petitioner's claims outlined in Point I of its main brief.

The Board's claim on this point is untenable for another equally conclusive reason. In the proceedings before the Circuit Court, petitioner urged its contentions relating to lack of jurisdiction as it does now. The Board interposed the same objection under Section 10(e) of the Act as it does now. The Circuit Court, however, considered and decided petitioner's claim of lack of jurisdiction on the merits (R. 913). Therefore, it is fair to assume that the Board's contention under Section 10(e) was rejected by the Court. The Board has filed no cross-petition for review and therefore is in no position to complain of the Circuit Court's treatment of the applicability of Section 10(e). For this Court now to determine that Section 10(e) precludes consideration of petitioner's claim of lack of jurisdiction would, in effect, constitute a reversal of the Circuit Court on this point without any cross-petition of the Board requesting such relief.

In addition, petitioner duly filed exceptions to the Trial Examiner's Intermediate Report stating that the conclusions and recommendations contained there-

in were "contrary to law and not supported by the evidence" (R. 835).

Second: The remainder of the Board's argument on the jurisdiction question may be summarized as follows:

(a) A comparison between the charge and the complaint reveals almost identical allegations, hence, the complaint "states the charges" as required by Section 10(b) of the Act and Section 5 of the Regulations (p. 67);

(b) That the complaint embodied the "subsequent conduct of petitioner" and the allegations of the complaint are the same as the charge "chronologically extended to the date of the issuance of the complaint." (p. 68);

(c) Whatever variance may exist between the charge and the complaint raises no question of due process of law since it is the complaint and not the charge which puts a respondent on notice of the respects in which he is asserted to have infringed the Act (pp. 66, 67).

These averments are all based on serious misconceptions of the facts, the pleadings and petitioner's claims in respect thereto. Petitioner makes no claim that this complaint fails to state the charges or that there was any variance between the complaint and the charge. On the contrary, we admit that the allegations of unfair labor practices contained in the charge of August 2nd, 1937 were substantially stated in the complaint (see Petitioner's Main Brief, p. 22), but assert that *these were not the same unfair labor practices which ultimately the Board found petitioner had committed.*

The confusion apparent in the Board's treatment of this subject is due in part to a failure to separate the sequence of events, namely—those occurring prior to August 2nd, 1937, the date of the charge, and those occurring subsequently. The *prior* events only were the subject of the charge and the complaint. The *subsequent* events were not put in issue by the pleadings or at the hearing—yet the Board's order dealt exclusively with them and ignored the occurrences alleged in the pleadings, except in a single instance, shown below.

Did the complaint, issued October 7th, 1937, include the events of September, 1937? The answer is easily found and it is an emphatic "No". The relevant portions of the complaint (R. 776-778) disclose the following:

Paragraph 5 alleges petitioner's failure to bargain with the Union on July 29th, 1937 and thereafter. This alleged violation of Section 8(5), related to matters occurring prior to August 2nd, 1937 and the Board's authority to act with respect thereto is not disputed by petitioner.

Paragraph 6 provides, in part: "Respondent, by its officers and agents *on or about July 16, 1937*, * * * did form or sponsor a labor organization or plan * * * Said respondents have dominated and contributed to the support of and interfered with the administration of *said* labor organization or plan down to and including the date of the issuance of this complaint * * *"

Clearly, this paragraph of the complaint relates only to a labor organization formed on July 16th, 1937. The domination thereof, "down to and including the date of the issuance of this complaint",

specifically refers to "said labor organization", *i. e.*, the organization formed on July 16th, 1937. The Board, in support of this allegation, offered testimony at the hearing of a labor organization that was purported to have been created during July, 1937. That testimony conclusively established, however, that no such organization ever existed. We need quote only a few sentences of the Board's main brief on this subject.

> Page 14: "Supervisory employees also spoke, urging the employees to accept Sanford's suggestion (R. 873; 326-330, 297-301, 349-351), *but the proposal was rejected* (301-305, 359)."
>
> Page 16: "There is evidence that Dorsey was present when a number of signatures were obtained (R. 876; 309, 357-358). The petition eventually came to Healey, petitioner's assistant secretary, *who destroyed it* (R. 461)."

With regard to the contracts, the relevant portions of paragraph 7 of the complaint are as follows:

> "Respondent, by its officers and agents while engaged at said Brooklyn Plant as described above, from on or about *July 15, 1937*, down to and including the date of the issuance of this complaint, * * *; has made signing of individual contracts a condition of employment; * * *"

It is to be noted that in this paragraph, signing of individual contracts is not specifically limited, in point of time, to July 17th, 1937. But any uncertainty on this score is eliminated by the succeeding paragraph of the complaint. Paragraph 8 thereof states:

> "On August 2, 1937, respondent's employees

in said Brooklyn Plant went on strike because of respondent's acts described above in paragraphs 5 to 7 inclusive * * *"

One of respondent's acts "described above" in paragraph 7 was the imposing of individual contracts, and if the employees, on August 2nd, 1937, struck on that account, it is obvious that the signing of contracts, according to the complaint, must have taken place between July 17th, 1937 (as alleged in paragraph 7) and August 2nd, 1937 (as alleged in paragraph 8). This was the understanding of counsel during the hearing for Mr. Sklar, the Union attorney said: "The contracts referred to are the ones mentioned by Mr. Sanford on July 29th" (R. 380) and Board's counsel stated that "Complaint embodies none of these contracts" (R. 381).

So, it is clearly evident, despite the Board's assertions to the contrary, that the complaint does not pretend to include the contracts that were executed in September, 1937.

What, then, did the charge and the complaint, in mentioning "contracts", purport to include? It is sufficient to refer to the Board's main brief which, after reciting an occurrence on "July 19th, or 20th", states that on the following afternoon Sanford, petitioner's president, conferred with employees (p. 15).

> "Sanford then stated that petitioner proposed to grant, beginning July 1, 1938, a 5-percent wage increase, time and one-half for overtime, and one week's vacation with pay (R. 876; 301-303), and asked the employees to contact the other workers and then come down and see him again (R. 303). *The employees were dissatisfied with the offer, and it was dropped* (R. 876; 305)."

This was the so-called "contract" alleged in the charge and the complaint. It never had any existence and the Board made no order with respect to it.

Not only did the charge and complaint fail to include either the September Committee or the September contracts, but the Board never raised an issue concerning them during the course of the hearing. The record shows that on October 15th, 1937, the Board completed its case and rested (R. 393). Board's counsel had made no attempt to go beyond the pleadings for he did not offer in evidence the petition (R. 866 a) whereby the employees had designated the Committee.

Thereafter, on October 18th, 1937 (R. 433), during the presentation of *petitioner's case in defense,* the employees' petition was offered and received into evidence—not by the Board—but by petitioner itself (R. 575). It was offered by petitioner in connection with the only issue properly before the Board, to wit: the charge under Section 8(5) of the Act that petitioner had failed to bargain collectively with the Union in July, 1937. In view of the fact that the employees had expressly stated in their petition that "the authority given to our fellow workers to represent us in collective bargaining supersedes any authority that any of the undersigned may have given to any other group, organization or individual", it was absolutely necessary for petitioner to prove to the Board that the Union no longer represented the employees so as to enable it to arrive at a correct determination of the Section 8(5) issue.

Likewise, the record shows that the September contract was never offered in evidence by Board's counsel. It was marked for identification only (R. 374), and then petitioner's counsel voluntarily stipu-

lated to offer the same into evidence "by consent" (R. 385), and the contracts were thereupon received in evidence.

Petitioner's answer alleged as a defense to the proceedings the existence of the Committee and the contracts (R. 794, 795), and it was essential for petitioner, in support thereof, to offer in evidence the requisite documentary proof on those subjects. But the Board did not thereupon acquire any rights of affirmative action—to disestablish the Committee or to seize upon and destroy the contracts—when neither the charge nor the complaint raised any issue as to their validity. (*Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 235).

The Validity of the Contracts and the Failure to Give the Committee and the Employees Notice of the Proceedings in Respect Thereto.

The Board makes little or no pretense of defending its failure to give notice and hearing to the individual employee parties to the contract, for in truth there is no excuse that may be submitted for its arbitrary procedure in this regard.

Instead, the Board concentrates almost solely on the position of the Committee as a party not entitled to notice and expends much effort in an attempt to extend the principle of the *Pennsylvania Greyhound* case to the facts at bar, notwithstanding the fact in the *Consolidated Edison* case this Court declined to apply that principle where contracts were involved.

It is true that in the *Consolidated Edison* case the labor organization was not found by the Board to be dominated by the employer, whereas here the reverse

is true. But lack of employer domination was not the decisive factor on which that decision was based. The important element there was the presence of contract rights in the labor organization which this Court held could not be extinguished without notice under the "plainest principle of justice", 305 U. S. 197, 233.

Notice to the company-dominated union—in proceedings leading to its non-recognition by the employer—was held not necessary in the *Pennsylvania Greyhound* case on the ground that the order did not run against it and its presence was not necessary for appropriate action by the Board, 303 U. S. 261, 271. The rule is not operative when contracts are involved and the proceedings eliminate in their destruction (*Consolidated Edison* case). The point of distinction between the two cases rests primarily upon the nature of the interest of the labor organization in the controversy and the degree to which the Board's order may affect it, and not on its status as a free or dominated organization.

If domination by the employer, or lack of it, was the sole standard or criterion by which the rights of a labor organization to notice and hearing are to be measured, it is obvious that the results would be flagrantly unjust, and represent nothing less than the infliction of a penalty or punishment upon that labor organization. In the *Pennsylvania Greyhound* case notice to the labor organization was deemed unnecessary—not because it was sponsored or dominated by the employer—but because the Board's order did not directly affect it. Where however, a labor organization possesses contract rights, even if it be found by the Board to be dominated by the employer,

it has the identical interest in the controversy and is affected by the result of the Board's order to the same extent as a free organization; hence it is entitled to the same rights of notice and hearing accorded the other, notwithstanding the pendency of a charge of company-domination.

Apart from the rights of the Committee to notice and hearing, there is no excuse or defense for the Board's denial of those rights to the individual employee parties to the contracts, and as to them the order cancelling their individual contracts is manifestly invalid.

The principle of the *Consolidated Edison* case was recently applied in *National Labor Relations Board* v. *Cowell Portland Cement Co.* (C. C. A., 9th) (Nov. 28, 1939—No. 9092). There the Board cancelled a closed shop contract that had been executed by the employer with a union of his employees, and failed to give the union or the employees any notice of the proceeding. The Court held:

> "Nor is there merit in the contention that the A. F. of L. employees may be deprived of their property rights because what the Board calls 'substantial justice' has been done. We do not perceive the validity of such a conclusion before the A. F. of L. employees or their union have been afforded an opportunity to present their case. Substantial *injustice* may be done if the laborer is not permitted to defend his contract.
>
> "Similarly, there is no merit in the Board's contention that it has proved the A. F. of L. contract to be 'illegal'. To us, in the absence of the A. F. of L. Union or any of its members as parties defending their contract, proof of illegality is as meaningless to cause us to invalidate

the contract as an argument that with a record showing neither apprehension nor plea of an accused we should sustain a judgment of his conviction because the record contains strong and uncontradicted evidence of guilt.

* * * * * * * *

"We hold that the Board had neither jurisdiction of the subject matter of the A. F. of L. employees' contract nor of the persons of such employees or their union and, hence, that that portion of the Board's order requiring the respondent to cease and desist in the performance of the A. F. of L. contract is invalid."

The Board suggests that the Committee or the employees could have intervened in the proceedings before it or filed a petition for review of the order as a "person aggrieved" in the Circuit Court of Appeals. The contention is devoid of all merit. The same arguments were urged by the Board in *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 234, and there rejected by this Court (accord: *National Labor Relations Board* v. *Sterling Electric Motors, Inc.*, C. C. A. 9th; No. 9209; Jan. 9, 1940). The Board's position here is even weaker than it was in the *Consolidated Edison* case, for nowhere in this record is there to be found a single fact or inference from which it can be deduced that either the Committee or the employees had any knowledge, actual or constructive, of these proceedings, or of the pleadings or prayers of the parties sufficient to apprise them that their interests were involved.

The Board's attack upon the validity of paragraph "Seventh" of the contract is fully answered in our

main brief (pp. 33-36). We have further corroboration of the lawfulness of the provision whereby the employees agreed not to demand a signed agreement with any union (R. 854), supplied by the recent decision of *Republic Steel Corporation* v. *National Labor Relations Board* (C. C. A., 3rd), 107 Fed. (2d) 472, 478, where the Court held:

> "Republic vehemently contends that the strike was caused solely by its refusal to sign the contract submitted by the S. W. O. C. This refusal the Board concedes was not an unfair labor practice."

At pages 41 to 42, the Board discusses the question as to whether employees may waive their rights under Section 7* of the Act and states flatly that such rights "are not susceptible of being 'waived' by employees", and that "no one may 'waive' a right which has been granted, not as a personal privilege but in furtherance of a valid public policy".

As we stated in our main brief, the employees, in executing the individual contracts, did not renounce a single right or benefit granted by the Act—though even if they had done so, public policy would not thereby have been violated (p. 44). We raised the point in order to rebut inferences to the contrary propounded by the Board.

On this subject it may be observed preliminarily that in modern times employees have always possessed the right to join and form labor organizations

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* "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

and to bargain collectively with their employer. *American Steel Foundries* v. *Tri-City Trades Council*, 257 U. S. 184, 209; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33.

Section 7 merely re-stated this principle and granted no more to employees than that which had been enjoyed by them for a long time prior to its enactment. Other parts of the Act implement Section 7 by setting up machinery for the assistance and protection of those employees who may desire to assert the rights specified in that section; but as we previously stated, such rights are permissive and not mandatory, and may therefore be waived.

It is a matter of common knowledge that the vast majority of employees in this country have not joined labor organizations and do not bargain collectively. These employees are, by their inaction, necessarily waiving the rights outlined in Section 7, yet no one would assert that their failure to exercise those rights is in violation of the policy of the Act, or is in any way unlawful. There is, naturally, no legal difference between a free and voluntary waiver affirmatively made by contract, and one arising through passivity. Since an employee is free to choose whether to accept or reject the benefits provided in Section 7, it is plain that the exercise of that choice cannot affect or involve any considerations of public policy. The Board's argument to the contrary, carried to its ultimate conclusion, would require a holding that Section 7 of the Act is compulsory and imposes an obligation on employees to join labor organizations and bargain collectively, irrespective of their wishes in the matter,—a result which Congress certainly never intended.

Our views here expressed have received judicial approval. In *National Labor Relations Board* v. *Sterling Electric Motors, Inc.* (C. C. A. 9th, Jan. 9, 1940, No. 9209), the Court said:

> "The third alternative for the small plant seems almost ignored in the titanic struggle for power of nation-wide internationals and associations, though the right to choose it is as worthy of the consideration of courts and legislatures as either of the other two. That is the right not to join or create or assist any labor organization at all, but to deal individually with the employer.
>
> * * * * * * *
>
> "In a proceeding seeking to destroy a labor organization we do not interpret the intent of Congress in enacting the Labor Board legislation to have established any presumption that employees are always to be deemed to be aiding a violation of the act if they prefer no organization and decline to create one."

Our arguments on this subject, we hasten to add, are not meant to imply that an employer can, by contract or otherwise, escape the consequences of any unfair labor practices listed in Section 8 and committed by him. That section, unlike Section 7, sets forth no personal rights; it specifies certain acts of an employer that constitute violations of national law and these violations are the exclusive concern of the Board and the Courts and cannot be adjusted or waived by the acts of private parties. Section 10(a) of the Act (see Appendix—Board's Brief, p. 76). It is in respect to Section 8 and other related sections in the

Act that the "public authority" referred to in the Board's brief exists, and not in respect to the long-established private rights re-stated in Section 7.

CONCLUSION.

It is therefore submitted that petitioner has amply demonstrated both in its main and reply briefs that on the facts in this record and on the principles of law applicable thereto, there is no basis for the decision of the Court below, which modified and enforced the order of the Board finding the petitioner guilty of violating Sections 8(1), (2) and (5) of the Act. The cease and desist provisions and the affirmative directions contained in the order of the Circuit Court of Appeals (R. 914-917) are therefore erroneous and should be reversed in all respects.

Respectfully submitted,

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January, 1940.

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No. 272

In the Supreme Court of the United States

OCTOBER TERM, 1939

NATIONAL LICORICE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 867–897) are reported in 7 N. L. R. B. 537. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 907–913) is reported in 104 F. (2d) 655.

JURISDICTION

The order of the Circuit Court of Appeals was entered July 6, 1939 (R. 914–917). The petition

for a writ of certiorari was filed August 7, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the findings of the National Labor Relations Board that petitioner had violated Section 8 (1), (2), and (5) of the National Labor Relations Act were supported by evidence.

2. Whether the Board erred in ordering petitioner to discontinue its contract with the Collective Bargaining Committee, a labor organization of its employees, and certain individual contracts with the employees.

3. Whether petitioner can, and particularly at this point, contend that the order invalidating the contracts violated the rights of the Committee and the employees under the Fifth Amendment in that they were not made parties to the proceeding.

4. Whether the charge was adequate to support the complaint and order.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Sec. 151 *et seq.*) are set out in the Appendix to the petition and supporting brief, pp. 37–38.

STATEMENT

On August 2, 1937, the Bakery and Confectionery Workers International Union of America, Local 405 (hereinafter called the Union), filed with the Board's Regional Director in New York City a charge alleging that petitioner had engaged in certain unfair labor practices affecting commerce, as defined in the National Labor Relations Act (R. 772–773). On October 7, 1937, the Board, by its Regional Director, served a complaint and notice of hearing upon petitioner (R. 774–780). Petitioner, on October 11, 1937, filed a written notice of motion for a bill of particulars (R. 783–788), and on October 13, 1937, filed an answer, which, in addition to other matters not now in issue, denied that it had engaged in the unfair labor practices charged (R. 790–798).

Pursuant to notice, a hearing on the complaint was held in New York City on October 13–16 and 18–20, 1937, before a Trial Examiner duly designated by the Board. The Board, petitioner, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded to all parties. At the beginning of the hearing counsel for the Board served a bill of particulars (R. 799–801, 802–803).

On February 8, 1938, the Trial Examiner filed his intermediate report (R. 804–828), in which he

found that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (5) and Section 2 (6) and (7) of the Act. He recommended that petitioner cease and desist from those violations, and, upon request, bargain collectively with the Union (R. 826–828). Petitioner filed exceptions to the report (R. 829–837). Oral argument was granted, but subsequently waived (R. 841).

On May 31, 1938, the Board rendered its decision, setting forth its findings of fact, conclusions of law, and order (R. 867–897). Briefly summarized, they are as follows:

Petitioner, a New York corporation with plants in Brooklyn, Philadelphia, Moline, and Montreal, is engaged in the business of manufacturing and selling licorice products and confections for drug, confectionery, grocery, and allied trades. Approximately 48 percent of the raw materials used at the Brooklyn plant, which is the one here involved, are purchased from points outside the State of New York, and about 41 percent of the finished products there manufactured are shipped outside that State. The normal force at the Brooklyn plant, excluding clerical and supervisory employees, is approximately 140 men (R. 873–874). The jurisdiction of the Board is not in issue.

The findings of the Board with respect to the unfair labor practices (R. 874–892) are discussed in detail in Point I, *infra*, pp. 6–18. In summary, the Board found that petitioner, by refusing to

bargain collectively with the Union, has engaged and is engaging in an unfair labor practice within the meaning of Section 8 (1) and (5) of the Act. The Board also found that petitioner, by coercing and intimidating its employees in the exercise of their rights to self-organization and collective bargaining, and by persuading and coercing its employees to refrain from becoming members of the Union and to sign certain individual contracts of employment, has engaged in unfair labor practices within the meaning of Section 8 (1) of the Act. Finally, the Board found that petitioner, by initiating, sponsoring, and dominating a labor organization of its employees known as the Collective Bargaining Committee, has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act (R. 893–894).

Upon the basis of those findings, the Board entered an order (R. 894–897) requiring petitioner to cease and desist: from dominating and interfering with the administration of the Collective Bargaining Committee or any other labor organization of its employees; from recognizing the Committee as the representative of any of its employees; from giving effect to its contracts with the Committee and with the individual employees; and from refusing to bargain collectively with the Union. As affirmative relief designed to effectuate the policies of the Act the Board ordered petitioner: to withdraw recognition from the Committee; to inform, in writing, the Committee and each of the em-

ployees who signed an individual contract that such contract is in violation of the National Labor Relations Act, that the employees are relieved of all obligation under them, and that respondent will no longer demand their performance; to bargain collectively, upon request, with the Union; and to post appropriate notices.

On August 29, 1938, the Board filed in the court below its petition for enforcement of the order (R. 4–12). On June 12, 1939, the court directed enforcement of the Board's order, with the exception of paragraphs I (d) and II (c), which were modified to the extent of conditioning the order to bargain with the Union upon a determination, in an election, that the Union is still the choice of a majority (R. 907–913).[1] An order of enforcement in accordance with the opinion was filed on July 6, 1939 (R. 914–917).

ARGUMENT

I

THE FINDINGS OF THE BOARD THAT PETITIONER HAD ENGAGED IN UNFAIR LABOR PRACTICES IN VIOLATION OF SECTION 8 (1), (2), AND (5) OF THE ACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE

The petition for certiorari (pp. 32–36) challenges the finding of the Board that petitioner had violated Section 8 (2) of the Act in that it had dominated and interfered with the Collective Bar-

[1] Although the Board has filed no cross-petition on this issue, it does not agree that the court below was correct in thus modifying its order.

gaining Committee on the ground that the finding is not supported by substantial evidence. The specification of errors (p. 17) makes a similar attack upon all other portions of the Board's order. It may be doubted whether petitioner has in this way effectively challenged the Board's findings and order with respect to the violations of Section 8 (1) and (5) of the Act. See *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 178. We shall, however, summarize the evidence relating to the violation of those sections as well as that relating to the violation of Section 8 (2), in order that a complete picture may be before the Court.

The Union began its activities at petitioner's Brooklyn plant in early July 1937, when a number of petitioner's employees there requested Galvin, the president of the Union, to assist in organizing the plant (R. 874; 43, 240). By the evening of July 14, of the approximately 140 employees within the appropriate unit (R. 39),[2] 99 had signed applications for membership (R. 875; 258, 272–275, 181, 241, 741). Each application designated the Union as the applicant's bargaining agent (R. 134). Consequently, as the Board found, on July 14, 1937, and thereafter, the Union represented a majority of the employees in the unit (R. 888).

[2] There is no controversy with respect to the appropriate unit. The Board found that the unit should include all the production employees of the company, including working foremen, but should exclude executive, supervisory and office employees, salesmen, and truck drivers (R. 887).

On the evening of July 14 Galvin sent a telegraphic night letter to petitioner, requesting that a date be fixed for a bargaining conference (R. 875; 181, 391, 858). Petitioner received the telegram on the morning of July 15 (R. 875; 605–606, 717), but did not reply to it or acknowledge its receipt (R. 875; 44, 446). Instead, petitioner's president, Sanford, called a meeting of the employees on July 16, and, reading from a prepared paper,[3] informed the employees that they were "one big, happy family," that it "was not necessary" for them to "go to an outside union," and that he would not recognize an outside union (R. 875, 299, 327, 342, 351). He then said (R. 300):

> Before I leave this room I want you to pick your own committee, and after you pick your own committee you come downstairs into my office and bargain with us.

Supervisory employees also spoke, urging the employees to accept the suggestion (R. 875, 326–330, 297–301, 349–351), but the proposal was rejected (301–305, 359).

On July 19 or 20, Galvin and Picariello, one of the trustees of the Union, called at the plant and sought a collective-bargaining conference with petitioner's officials (R. 875; 44). They brought with them a proposed agreement which had been approved by the employees, and 109 signed applica-

[3] Counsel for petitioner, although requested to do so, declined to offer this paper in evidence (R. 329).

tions (R. 875–876; 44, 258). Galvin offered to show the membership cards to Sanford, but when Sanford declared that he would not bargain with the Union even if it did represent a majority (R. 876; 144), Galvin withdrew the offer (R. 876; 45, 71, 73, 144). Sanford asserted that he had some doubt as to the identity of the Union officers, but he refused to telephone to either the American Federation of Labor or the Union offices to satisfy himself (R. 59–60, 452). The Union's proposed agreement was not discussed at all (R. 144).

On the afternoon following the visit of Galvin and Picariello, Sanford summoned to his office a group of about 14 employees who had been selected as best able to convey petitioner's views to the other employees (R. 876; 460, 626). These employees were told that "two very lovely young gentlemen who purported to be representatives of yours" had visited the plant that morning (R. 876; 459, 624). Sanford then stated that petitioner proposed to grant, beginning July 1, 1938, a 5 percent wage increase, time and one-half for overtime, and one week's vacation with pay (R. 876; 302–303), and asked the employees to contact the other workers and then come down and see him again (R. 303). The employees were dissatisfied with the offer, and it was dropped (R. 876; 305).

Shortly thereafter, Dorsey, petitioner's superintendent, selected about eight employees to circulate a petition nominating a committee to supersede

the Union as the collective bargaining representative of the employees (R. 876; 306–311, 357–361). The employees did not at first understand the purport of the petition, but as soon as they became aware of its effect they struck out their signatures and returned the petition to Dorsey (R. 876, 308–310, 356–361, 386–389). There is evidence that Dorsey was present when a number of signatures were obtained (R. 876; 309, 357–358). The petition eventually came to Healey, petitioner's assistant secretary, who destroyed it (R. 461).

On July 21 the Union filed with the regional office of the Board a petition asking to be certified as the exclusive collective bargaining agent of petitioner's production employees (R. 876; 47). A meeting of representatives of both petitioner and the Union was arranged for July 28 at the office of John T. McCann, a representative of the Board, and at that meeting, upon McCann's assurance that he was convinced that the Union represented petitioner's employees, Sanford and Healey agreed to meet with them on the following day (R. 876–877; 464–466).

Accordingly, on July 29, Galvin, Anderson, Sklar, and Picariello, representing the Union, arrived at petitioner's plant, and met with Sanford, Carpentier (a vice president), Smylie, and Healey, representing petitioner (R. 877; 49, 467). Since petitioner raises no specific challenge to the finding of the Board, approved by the court below, that the "negotiations" of July 29 did not in fact constitute

collective bargaining within the meaning of Section 8 (5) of the Act (see p. 7, *supra*), it is unnecessary to relate the events of the conference in detail. A general statement, however, will illuminate petitioner's attitude.

Sanford, reading from a prepared statement, disposed of the Union's demands one by one, characterizing them as "impossible," "impractical," "preposterous," or "unworkable" (R. 877; 52–53, 94). He then presented counter proposals similar to those made to the employees' group on July 20 (R. 877; 95–97, 100). The whole meeting was conducted in a manner designed to prevent discussion: whenever a point came up, Sanford would simply reread the passage concerning which the question was asked (R. 877; 50, 84, 147, 197–198).

Even more significant, however, was the revelation of petitioner's position with reference to the Union. Sanford stated that he would not recognize the Union as the collective bargaining agency of the employees, and would make no contract with it, but rather, as the Board found (R. 877):

> would talk with the Union representatives and ask them "to bring back the results of the conference to his employees and thereafter it would be required of his employees that they individually sign contracts with them and that he deal directly with his employees and not with the Union."

The finding was based on the clear and direct testimony of the Union representatives (R. 50, 54, 96,

105, 145, 150), and was inferentially confirmed—certainly not contradicted—by the testimony of petitioner's representatives (R. 468–470; cf. R. 159, 92). When Galvin stated that the whole course of proceedings had a familiar ring, Sanford admitted that the Brooklyn Chamber of Commerce was advising them (R. 877; 57).[4] At the conclusion of the meeting, Galvin made a request for a further conference, but no arrangements for it were made (R. 877; 112).

On August 2, Anderson telephoned Sanford and asked for a copy of the transcript of the July 29 meeting, which Sanford had promised to give the Union. Sanford informed him that the notes had been jumbled, and that the stenographer had left

[4] The reference is to the method of evading the National Labor Relations Act devised by L. L. Balleisen, of the Brooklyn Chamber of Commerce (see R. 719–721). Under the Balleisen formula the employer refuses to sign a contract with the union representing the majority of the employees, and insists instead that the contract be "executed between the company and each workman individually and not as a collective agreement with representatives of the employees, as provided by the act." *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 100 (C. C. A. 2d). The formula was condemned in the *Hopwood* case, *supra*, and has been held by the Board to violate the Act in a number of cases. *Matter of Atlas Bag and Burlap Co.*, 1 N. L. R. B. 292; *Matter of Cating Rope Works, Inc.*, 4 N. L. R. B. 1100; *Matter of Metropolitan Engineering Co.*, 4 N. L. R. B. 542; *Matter of American Mfg. Co.*, 5 N. L. R. B. 443; *Matter of the Jacobs Bros. Co., Inc.*, 5 N. L. R. B. 620; *Matter of Federal Carton Corp.*, 5 N. L. R. B. 879; *Matter of David E. Kennedy, Inc.*, 6 N. L. R. B. 699; *Matter of Art Crayon Co., Inc.*, 7 N. L. R. B. 102.

on her vacation (R. 878; 163, 188). Upon Anderson's request, another meeting was set for August 5 (R. 878; 163–164).

During the morning, however, petitioner's employees stopped work and gathered in the shipping room away from the machines, where they remained for the balance of the afternoon (R. 878; 312). The strike was not called by the Union, but rather was a spontaneous expression of dissatisfaction with the course of the negotiations (R. 878; 115–121, 243–244, 311–312). Although petitioner immediately called police and hired guards, there was no violence, and the employees left the plant later in the afternoon (R. 878; 316–317, 513).

Petitioner, of course, was under an obligation to bargain notwithstanding the strike, but there is convincing evidence to support the finding of the Board (R. 889–890) that it failed to do so upon request during that period. Anderson learned of the strike about 1 P. M. on August 2 (R. 878; 162–163, 167, 184). He immediately called Sanford, and offered to do anything in his power to help settle it (R. 878; 168, 223). Sanford, however, accused Anderson of having called the strike, which Anderson denied, and refused to talk with him further (R. 878; 168). Anderson then went to the plant and expressed to Healey his desire to help settle the strike. Upon inquiry he was told by Sanford through Healey that the August 5 meeting had been called off (R. 879; 169). Anderson's

appeal to the New York State Labor Relations Board was likewise without result, the Board representative stating that he had been unable to get the executives of the company to agree to meet with the Union (R. 879; 166, 171–172, 237).

Anderson also wrote to petitioner on August 2 (R. 848) asking for an immediate conference. Petitioner's answer (R. 849) announced the cancellation of the August 5 conference, and stated that no future time would be set until "we have a letter from you informing us as to whether or not this strike was instigated, ordered or approved by your Union, or any official or officials of your Union" (*id.*). Anderson did not reply, both because he had orally disclaimed responsibility, and because he was afraid a letter such as petitioner had requested would be used to alienate employees from the Union (R. 879; 219, 222, 232–233).

During the strike petitioner's hired guards ingratiated themselves with the pickets, buying them beer and lunches, and at the same time attempted to persuade them to call off the strike (R. 879–880; 320–321, 362–363, 604–605). Healey himself told the pickets that the Union was no good and a "racketeer," and that petitioner would close up and move to Philadelphia before it would recognize the Union (R. 880; 246, 251–252). These intimidating and coercive statements were in plain violation of Section 8 (1) of the Act.

On August 25, petitioner reopened the plant (R. 880, 520). On August 27 petitioner sent a

letter (R. 850) to each employee, requesting him to return to work on August 30, and stating that "all available means of protection" would be afforded. On the same day Healey, in reply to an anonymous telephone call, met one William McCann and two other employees in the Brooklyn Y. M. C. A. (R. 880; 525). The employees stated that they were anxious to return to work, and asked whether they could have their own committee and bargain with petitioner. Healey replied that if they could obtain the authorization of a majority of the employees petitioner "would be very happy to deal with them" (R. 880; 526–527).

A few days after he returned to work McCann again asked Healey about the procedure for getting together a collective bargaining committee. Healey told them he could not go into it, but to get a committee which could be demonstrated to represent a majority of the employees (R. 880; 659). On September 9 McCann again came to Healey for assistance in drawing a letter of authorization which the employees could sign. Healey refused to help, but sent him to Sanford (R. 881; 576). Sanford then dictated the form (R. 866a), designating a committee of workers as the collective bargaining representatives of the workers, and revoking any authority to any other organization. This letter was circulated among the employees by McCann, and on September 9 was presented to San-

ford and Healey with 110 signatures besides those of the members of the Committee (R. 881; 696).

Thus the Committee was instigated and promoted directly by petitioner. But even with less overt acts of sponsorship, the Committee could not be regarded as the free choice of the employees. Petitioner had shown unswerving opposition to an outside organization and a pronounced desire for an "inside" plan, and had driven its position home with unfair labor practices against the Union. An "inside" organization formed under these circumstances, as the Committee was, could not but be a response to petitioner's interference and the subject of its domination and support.

The subsequent relations of the Committee with petitioner indicate its continued lack of independence. On September 10, the Committee sought to bargain with petitioner (R. 881; 580–581). No question was raised as to its authority to represent the employees (R. 882; 698). The Committee asked what could be done about wages, and Sanford read and explained to them a contract containing the same proposals that had been offered on July 20 and July 29 (R. 882; 581–582; cf. R. 702). The Committee's only requests related to pay for holidays and a reduction of the term of the contract from 5 to 3 years, which were accepted with modifications (R. 882; 586). The contract finally agreed to required the signatures of not only petitioner and the Committee, but of the individual employees

as well (R. 882; 582). The Committee circulated copies of the contract (mimeographed by petitioner, R. 738) and the individual contracts were signed by certain of the employees and returned to petitioner (R. 882).

Several subsequent incidents reveal petitioner's domination of the Committee. For example, when Garone and 13 other employees returned to work, they asked the Committee if their group could have a representative upon the Committee. The Committee replied that they would have to see Sanford. The latter replied: "I am sorry; the committee has been picked already. There is enough right now on the committee" (R. 882–883; 761–764, 597). On another occasion Garone asked McCann, as a member of the Committee, to take up a grievance with the management. McCann refused, stating: "We can't argue for you" (R. 883; 764–765). Sanford himself told several employees that they would not get the 5 percent increase and that he would not "protect" their jobs if they did not sign the individual contracts (R. 883; 375, 381).

The violations of the Act inherent in the contracts thus executed are dealt with in Point II, *infra*. In addition to these violations, however, the foregoing summary of the Board's findings and the evidence upon which they were based makes abundantly clear that the general challenge made by petitioner to the Board's order cannot be sustained. Unquestionably, petitioner refused to bargain col-

lectively with the Union at the meetings of July 20 and 29, and thereafter during the strike. The domination, support, and interference with respect to the Committee is shown not only by the circumstances of its origin, but by the manner in which the "bargaining" with it was conducted, and by the complete lack of capacity for independent action which it demonstrated after that "bargaining." The numerous violations of Section 8 (1) of the Act also stand plainly revealed—the preliminary interference by Sanford with the free exercise of the employees' rights to select the Union as their bargaining representative, the first company-inspired but fruitless petition for an inside bargaining committee, the interference with the employees during the strike, as well as the other incidents described above. The cease and desist portions of the Board's order based upon these violations were consequently required by the Act (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265), and were properly ordered to be enforced by the court below (R. 914, 915).

II

PETITIONER WAS PROPERLY ORDERED TO DISCONTINUE ITS CONTRACTS WITH THE COMMITTEE AND WITH THE INDIVIDUAL EMPLOYEES

The discussion in Point I, *supra*, has dealt with petitioner's violations of the Act apart from the provisions of the contracts which were entered into by petitioner with the Committee and with its em-

ployees. Those contracts, the Board found, constituted violations of the Act both in their terms and in the circumstances of their making (R. 885–886). The court below upheld these findings (R. 911–912). We submit that the Board and the court below were correct.

The contracts are not of an unfamiliar pattern. Contracts of very similar character, entered into under the Balleisen formula have been considered by the Board in a number of cases (cited footnote 3, p. 12, *supra*). A similar contract was condemned, and the employer ordered to discontinue it, in *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, also decided by the court below. The admission by petitioner that it was being advised by the Brooklyn Chamber of Commerce, with which L. L. Balleisen is connected, and the striking similarity of the contract here and that condemned in the *Hopwood* case, leave no doubt that petitioner, too, hoped to avail itself of the Balleisen "formula" to avoid its obligations under the Act.

The critical portions of the present contract are contained in paragraph Seventh (R. 854). The paragraph begins:

> Any employee has the right to join any union of his own choosing or to refrain from joining any union.
>
> * * * * *

> It is mutually understood and agreed that the Employer will not discharge Employees because of legitimate union activities conducted outside the company time or company property or because of any affiliation with any union.

We need not consider whether these provisions coincide with the rights of the employees under the Act. The general statement and the guarantee are both rendered meaningless by the provision at the end of the paragraph:

> It is strictly understood and agreed, however, that the question as to the propriety of an Employee's discharge is in no event to be one for arbitration or mediation and that any action of reinstatement, if any, will be taken voluntarily by the Employer if it deems such reinstatement advisable.

It seems fairly clear that the abstract "right" of an employee not to be discharged because he becomes a member of a union and engages in union activity is of small value if the employee not only is precluded from raising through his representatives the reason for his discharge,[5] but also is forced

[5] The court below, although it believed the provisions quoted above to be "somewhat ambiguous" (R. 911), concluded that they were meant to deny the employees the right to have their representative act for them if the reason for their discharge was in question. Its conclusion was fortified both by the provisions that a discharged employee *individually* was entitled to put his case before petitioner, and peti-

to accept the decision of petitioner on that question.

Moreover, there are further provisions in the present contracts which seriously infringe the rights of employees under the Act:

> The Employees or any of them shall not and have not the right to demand a closed shop or a signed agreement by his Employer with any union.

It is obvious that much of the inducement to union membership is destroyed if the employee is aware that the union will in no event be permitted to embody the fruits of its collective bargaining in a signed agreement.

Moreover, here it is fairly plain that the words "with any union", which appear at the end of the last sentence quoted above, are of considerable significance. Petitioner clearly has no objection to signed agreements *as such,* since it executed one with the committee and with each of the individual employees. Its objection is to signing an agreement "with any union", and its purpose, we submit, is clear—to interfere with and discourage the development of genuine union organizations among its employees.

The conclusion is inevitable that the contracts were invalid on their face because the conditions

---

tioner's insistence that each employee sign the contract (R. 911–912). Indeed, the basic purpose of the Balleisen system is to make the collective bargaining committee merely a conduit through which the employer's proposals may be transmitted to the employees.

they impose violate the Act. As a consequence, the Board was under a mandatory duty to require petitioner to cease and desist from continuing to violate the Act by giving effect to them. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. Cf. *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2d); *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 236; *United States* v. *Reading Co.*, 226 U. S. 324, 357; *Swift & Co.* v. *United States*, 196 U. S. 375, 396; *Aikens* v. *Wisconsin*, 195 U. S. 194, 205, 206; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 465–466.

Moreover, these contracts were likewise, upon the evidence and findin[illegible] a direct consequence, indeed a medium of petitioner's domination and control of the Committee and its refusals to bargain collectively with the Union. Consequently, unless these contracts are terminated they stand as the embodiment both of illegal requirements and of illegal conduct, in direct negation of the policies of Section 7 of the Act.

The requirement in paragraph 2 (b) of the Board's order (R. 896) that petitioner inform each employee that the contracts are in violation of the Act and therefore invalid is, of course, necessary to make the cease and desist provisions of the order effective and to remove the contracts' coercive effect. *National Labor Relations Board* v. *Hopwood Retinning Co., supra.*

Petitioner contends (pp. 28–30) that the Board had no power to order petitioner to cease and desist from giving effect to these contracts in spite of their provisions and the circumstances under which they were made. Plainly, however, the decision in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, upon which petitioner relies, does not support the contention. Individual contracts certainly must not contain provisions which, like these contracts, purport to narrow the rights of the employees guaranteed by the National Labor Relations Act.

The requirement that petitioner shall cease giving effect to the contract with the Committee rests not only upon the provisions of that contract, which is identical with those between petitioner and the individual employees, but also upon the fact that such action is essential to make effective the provision of the order requiring petitioner to cease and desist from recognizing the Committee as the representative of any of its employees (paragraph 1 (b), R. 895). The Committee is not a *bona fide* labor organization, but an agency dominated and supported by petitioner in violation of Section 8 (2) of the Act. The contract is the embodiment of petitioner's illegal relations with, and is a consequence of its domination of, the Committee. It also perpetuates recognition for collective bargaining unlawfully conferred. It must, therefore, be

set aside. *National Labor Relations Board* v. *Eagle Mfg. Co.*, 99 F. (2d) 930 (C. C. A. 4th).

The contention advanced by petitioner (pp. 31–32) that *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, required a different result is plainly unsound. The Court emphasized that exactly the contrary situation was there presented—that the unions involved were national unions not under the control of the company, and that there had been no finding of violation of Section 8 (2) of the Act. 305 U. S. at 231–239. Nor were the contracts there involved invalid under the Act by reason of their terms.

III

THE CANCELLATION OF THE CONTRACTS DID NOT VIOLATE THE FIFTH AMENDMENT

Petitioner asserts (pp. 21–28) that it was deprived of due process of law with respect to the cancellation of the contracts in that (1) counsel for the Board had stipulated that the contracts were not in issue, and (2) no notice and hearing was afforded the Committee or the individual employees.

The answer to the first branch of the contention is, simply, that there was no such "stipulation". The portion of the record referred to by petitioner is as follows (R. 380–381; Mr. Mann was the attorney for petitioner, Mr. Sklar was attorney for the Union, and Mr. Graham was attorney for the Board):

Q. (By Mr. MANN.) Miss Tesoro, the amended charge says that the National Licorice Company has, by means of threats and intimidations, coerced, and attempted to coerce, its employees into signing individual contracts. In the first place, do you understand what those words mean, that I just read?—A. No.

Q. Well, "coerce" means to force.

* * * * *

Q. (By Mr. MANN.) "Intimidate" means about the same as threats. Did anybody threaten you or force you to sign this contract?—A. No.

Mr. SKLAR. Objected to, Mr. Examiner, on the ground that this charge applied to August 2nd and has nothing to do with the contract of September 20th.

Mr. MANN. It talks about individual contracts, and they offered in evidence a contract.

Mr. SKLAR. Those contracts referred to are the ones mentioned by Mr. Sanford on July 29th.

Mr. GRAHAM. In order to get the right effect, we are going to let these in. Complaint embodies none of these contracts.

Mr. MANN. May I ask on the record whether they want to go into this question of contracts under their amended charge? If not, let's forget about it.

(482) Trial Examiner KOREY. I have ruled you can ask the question. Please continue.

We submit that petitioner's counsel could not possibly have regarded this colloquy as a stipulation that the contracts were not in issue. The statement by Mr. Graham that "Complaint embodies none of these contracts," which is the only remark made by counsel for the Board upon which petitioner relies, is certainly far from a stipulation that the contracts were not to be considered thereafter. Moreover, petitioner's counsel immediately called for an interpretation of Mr. Graham's remark, and was told by the Trial Examiner that he could continue to pursue his line of questioning designed to prove the contracts to be valid, as petitioner had expressly alleged in its answer (R. 795). Finally, petitioner's counsel himself *thereafter* called Healey, an officer of petitioner, to prove their validity (R. 563–733). The conclusion is irresistible that petitioner was not in fact misled.

The second branch of the contention, that the Committee and the individual employees were entitled to notice and hearing, need not be discussed in detail, since the contention is plainly not open to petitioner in the present case.

Section 10 (e) of the Act, in providing for judicial review of Board orders, specifically states:

> No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. . . .

The objection which petitioner seeks to raise was not urged before the Board. Even in its exceptions to the Trial Examiner's report petitioner objected to the recommendations that it give notice of discontinuance of the contracts solely upon the ground that (R. 835)—

> said recommendations are contrary to law, and are not supported by the evidence adduced upon the hearing.

Not until the briefs were filed in the court below did petitioner raise the point.

The statute bars a belated objection of this character, which could easily have been obviated by the Board had the matter been timely raised. *Newcomb* v. *Wood*, 97 U. S. 581; *United States* v. *Atkinson*, 297 U. S. 157; *National Labor Relations Board* v. *National Motor Bearing Co.* (C. C. A. 9th), decided June 2, 1939.

Moreover, it is plain that so far as petitioner is concerned, there has been no lack of due process. It had proper notice and hearing. That is the limit of petitioner's interest. This Court stated in *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 558:

> The railroad can complain only of the infringement of its own constitutional immunity, not that of its employees.

See also *Erie Railroad Co.* v. *Williams*, 233 U. S. 685, 697; *Jeffrey Manufacturing Co.* v. *Blagg*, 235 U. S. 571, 576. The decision in *Consolidated Edi-*

son Co. v. *National Labor Relations Board,* 305 U. S. 197, is not to the contrary. In that case the unions whose rights were claimed to have been infringed by the failure of the Board to serve them had themselves intervened and asserted those rights in the Circuit Court of Appeals and in this Court.

Even were the point open to petitioner, it may be noted that the contracts here, unlike those involved in the *Consolidated Edison* case, were with numerous individuals and an organization through which the individual contracts were made, which "the employer had created and fostered * * * and dominated * * * in violation of § 8 (2)" (305 U. S. at 233).

IV

THE CHARGE WAS FULLY ADEQUATE TO SUPPORT THE COMPLAINT AND ORDER

There is no merit in petitioner's contention (pp. 18–20) that the decision below, insofar as it holds the charge filed sufficient to support the complaint and order, is in conflict with the prior decision of the same court in *National Labor Relations Board* v. *Hopwood Retinning Co.,* 98 F. (2d) 97. Were there any conflict, the present decision would, of course, control. But in fact there is not the slightest conflict. In the *Hopwood* case the charge filed with the Board alleged unfair labor practices only by the Hopwood Retinning Company, but the complaint was issued both against that company and against Monarch Retinning Company, another

corporation. The Board's order ran in terms against both companies. The court below ruled that the filing of a charge against Monarch was prerequisite to valid issuance of a complaint against that corporation. In the present case petitioner's objection goes not to the existence of a charge against it, but to the content of the charge.

Petitioner contends that the charge (R. 773) is not broad enough to support the order requiring discontinuance of the contracts. Laying to one side the general question whether a complaint of the Board must be confined strictly to previous matters stated in the charge, the charge in this case was filed before the Committee had been formed and long before the contracts were entered into. The opinion of the court below is a complete answer to the contention that under those circumstances the Board could not take action with respect to the contracts. After adverting to its prior decision the court stated (R. 913):

> * * * we need not consider here how far it [the *Hopwood case*] confines the proceeding to matters then existing, but not included. For here no "charge" could have included the company union and it was not necessary that it should. The original controversy had resulted in a strike; the strike had failed; the company union followed on the failure; and the Board was within its powers in treating the whole sequence as one, and in reestablishing the workmen's freedom, by ending the company union's privilege to represent them.

CONCLUSION

Wherefore, it is respectfully submitted that the petition for certiorari should be denied.

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No. 272

In the Supreme Court of the United States

OCTOBER TERM, 1939

NATIONAL LICORICE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON ~~PETITION FOR A~~ WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 867–897) are reported in 7 N. L. R. B. 537. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 907–913) is reported in 104 F. (2d) 655.

JURISDICTION

The order of the Circuit Court of Appeals was entered July 6, 1939 (R. 914–917). The petition for a writ of certiorari was filed August 7, 1939, and granted October 9, 1939. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the findings of the National Labor Relations Board that petitioner had violated Section 8 (1), (2), and (5) of the National Labor Relations Act were supported by evidence.

2. Whether the Board erred in ordering petitioner to discontinue its contracts with the Collective Bargaining Committee, a labor organization of its employees, and with certain individual employees.

3. Whether the order to discontinue the contracts violated any rights which petitioner may assert under the Fifth Amendment, either because of an alleged stipulation or because of lack of notice to the Committee or the individual employees.

4. Whether the charge was adequate to support the complaint and order.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 151 *et seq.*) and of the Rules and Regulations of the Board are set out in the Appendix, *infra*.

STATEMENT

On August 2, 1937, the Bakery and Confectionery Workers International Union of America, Local 405 (hereinafter called the Union), filed with the Board's Regional Director in New York City an amended charge alleging that petitioner had engaged in certain unfair labor practices affecting commerce, within the meaning of the National Labor Relations Act (R. 772–773). On October 7, 1937, the Board, by its Regional

Director, served a complaint and notice of hearing upon petitioner (R. 774–780). Petitioner, on October 11, 1937, filed a written notice of motion for a bill of particulars (R. 783–788), and on October 13, 1937, filed an answer, which in addition to other matters not now in issue, denied that it had engaged in the unfair labor practices charged (R. 790–798).

Pursuant to notice, a hearing on the complaint was held in New York City on October 13–16 and 18–20, 1937, before a Trial Examiner duly designated by the Board. The Board, petitioner, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded to all parties. At the beginning of the hearing counsel for the Board served a bill of particulars (R. 799–801, 802–803).

On February 8, 1938, the Trial Examiner filed his intermediate report (R. 804–828), finding that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (5) and Section 2 (6) and (7) of the Act (R. 824–825). He recommended that petitioner cease and desist from those violations, and, upon request, bargain collectively with the Union (R. 826–828). Petitioner filed exceptions to the report (R. 829–837). Oral argument was granted, but subsequently waived (R. 839–841).

On May 31, 1938, the Board rendered its decision, setting forth its findings of fact, conclusions of law, and order (R. 867–897). Briefly summarized, they are as follows:

Petitioner is a New York corporation with plants in Brooklyn, New York; Philadelphia, Pennsylvania; Moline, Illinois; and Montreal, Canada (R. 873). These proceedings involve only the Brooklyn plant (R. 873). Petitioner is engaged in the business of manufacturing and selling licorice products and confections for drug, confectionery, grocery, and allied trades (R. 873–874). Approximately 48 percent of the raw materials used are purchased from points outside the State of New York, and about 41 percent of the finished products of petitioner are sold and shipped outside the State of New York to points in 27 States (R. 874).[1] The normal force at the Brooklyn plant, excluding clerical and supervisory employees, is approximately 140 persons (R. 874).

The findings of the Board with respect to the unfair labor practices (R. 874–892) are discussed in detail in Point I, *infra*, pp. 13–29. In summary, the Board found that petitioner, by refusing to bargain collectively with the Union, has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act. The Board also found that petitioner, by coercing and intimidating its employees in the exercise of their rights to self-organization and collective bargaining, and by persuading and coercing its employees to refrain from becoming members of the Union and to sign certain individual contracts of employment, has engaged in an unfair labor practice within the meaning of Section 8 (1) of the Act. Finally, the Board found that petitioner, by initiating,

[1] The jurisdiction of the Board is not in issue.

sponsoring, and dominating a labor organization of its employees known as the Collective Bargaining Committee, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act (R. 893–894).

Upon the basis of those findings, the Board entered an order (R. 894–897) requiring petitioner to cease and desist: from dominating and interfering with the administration of the Collective Bargaining Committee or any other labor organization of its employees; from recognizing the Committee as the representative of any of its employees; from giving effect to its contracts with the Committee and with the individual employees; and from refusing to bargain collectively with the Union. As affirmative relief designed to effectuate the policies of the Act the Board ordered petitioner: to withdraw recognition from the Committee; to inform, in writing, the Committee and each of the employees who signed an individual contract that such contract is in violation of the National Labor Relations Act, that the employees are relieved of all obligations under them, and that respondent will no longer demand their performance; to bargain collectively, upon request, with the Union; and to post appropriate notices.

On August 29, 1938, the Board filed in the court below its petition for enforcement of the order (R. 4–12). On June 12, 1939, the court directed enforcement of the Board's order, with the exception of the paragraphs (I (d) and II (c)) dealing with bargaining with the Union, which were modified to the extent of conditioning the order to bargain with the Union

upon a determination, in an election, that the Union is still the choice of a majority of the employees (R. 907–913).[2] An order of enforcement in accordance with the opinion was filed on July 6, 1939 (R. 914–917). Thereafter petitioner filed its petition for a writ of certiorari, which was granted on October 9, 1939.

SUMMARY OF ARGUMENT

I. The evidence fully supports the Board's findings of fact that petitioner engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (5) of the Act. Petitioner, strongly opposed to "outside" unions, undertook to counter the Union's organizational drive by the use of the so-called "Balleisen" anti-union technique. Following the receipt of a request by the Union for collective bargaining, petitioner called meetings of its employees at which it denounced the Union and suggested the formation of an "inside" organization; selected a committee of employees to propagate its views among the employees; and sponsored the circulation among the employees of a petition calling for the supercession of the Union as bargaining representative by a committee of employees. Thereafter, it engaged in a process of sham negotiation with the Union, making no sincere attempt to arrive at a mutually satisfactory understanding and, in fact, announcing that it would under no circumstances sign an agreement with the Union. Moreover, al-

[2] Although the Board has filed no cross-petition on this issue, it does not agree that the court below was correct in thus modifying its order.

though the Union represented a large majority of the employees in an appropriate unit, petitioner refused to recognize the Union as the exclusive representative of the employees in such unit. Petitioner's conduct provoked a strike among the employees, during the course of which petitioner, in addition to refusing again to bargain with the Union, sought to break the strike by vilifying the Union to the employees. After the strike, which was unsuccessful, petitioner assisted in the formation of, and thereafter dominated, a labor organization of its employees known as the "Collective Bargaining Committee." Petitioner recognized and engaged in spurious negotiations with the Committee, the outcome of which was the execution of a series of "individual contracts" which impose unlawful limitations upon the right of the employees to engage in union activities.

II. The Board properly ordered petitioner to discontinue the contracts referred to above. The contracts were procured by means violative of the Act in that they were made through the instrumentality of a company-dominated labor organization; and were a part of the petitioner's campaign to crush the Union. The company-dominated Committee acted as petitioner's agent in "persuading" the employees to sign the contracts and petitioner announced that only those employees who signed the contracts would receive the benefits granted in the contracts or "protection" in their jobs. In addition, the contracts interfere with the exercise of rights guaranteed in the Act by requiring the employees to pledge themselves not to seek a signed contract with

any union and not to seek redress through collective bargaining representatives against arbitrary or unlawful discharge. Furthermore, the contracts take away the right of employees to seek changes in existing agreements (*National Labor Relations Board* v. *Sands Manufacturing Co.*, 306 U. S. 332, 342) by requiring the employees to agree not to request a closed shop or a signed union agreement. Petitioner's suggestion that the employees, by signing the contracts, "waived" their rights under the statute, is without merit, since "rights" under the Act are not private, but are granted in the public interest and cannot be "waived." See *Grandview Inland Fruit Co.* v. *Hartford Fire Insurance Co.*, 66 P. (2d) 827, 834, 189 Wash. 590, 109 A. L. R. 1472. Since both the making of the contracts and their terms were violative of the Act, the issuance of the order to cease and desist from giving effect to the contracts was mandatory under Section 10 (c) of the Act. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. The order is likewise sustainable as a valid exercise of the Board's power to order such affirmative action as will effectuate the policies of the Act. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 236.

III. There was no stipulation by Board counsel that the question of the legality of the contracts, a matter clearly put in issue by the pleadings, was to be removed from the case. The record shows convincingly that the contract issue was fully litigated and that petitioner was in no way misled or prejudiced by the alleged "stipulation."

The notice and hearing afforded petitioner was fully adequate to support the order to discontinue the contracts despite the lack of notice to the Collective Bargaining Committee and the individual employees. The present case is governed by the decision of this Court in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271. Accord: *National Labor Relations Board* v. *Pacific Lines*, 303 U. S. 272. Like the Association in the *Greyhound* case, the Committee was found on substantial evidence to be employer-dominated, within the meaning of Section 8 (1) and (2). The order here in question, likewise, was both appropriate and essential to the performance of the Board's duty to prevent unfair labor practices affecting commerce (Section 10 (a)). The order does not run against the Committee or the individual employees and their presence was not necessary in order to determine whether petitioner had violated the statute or to make an appropriate order against it. The present case cannot be distinguished on the ground that "contract" rights are here involved. The primary asset of a labor organization is its claim to recognition as the collective bargaining representative of the employees in negotiations with their employer. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515; *Texas & N. O. Ry. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 571. Whether the employer confers recognition by written contract or by tacit agreement is not here material. The form in which recognition is embodied does not change its vital significance to the union and should not be permitted to obscure the effect on the union of an order to

cease recognition and to disestablish the union as the bargaining agency. The procedure followed by the Board in the present case and approved in the *Greyhound* decision complies fully with the requirements of notice and hearing set up by Congress. The provisions of the Act are comprehensive and indicate an intention to exclude any requirement of notice to persons other than employers. No question of the constitutional adequacy of the statutory procedure, as applied to the Committee and the individual employees, is before this Court or was before the court below. Even if a constitutional question had been properly raised, the statutory procedure as applied in this case is clearly constitutional. The *Consolidated Edison* case, 305 U. S. 197, was concerned with a wholly different situation. In the opinion of the Court, there was no basis for a finding that the contracts which were there ordered to be set aside were a consequence of the unfair practices of the employer or in themselves thwarted any policy of the Act or that their cancellation would in any way make the order to cease and desist the unfair practices any more effective. Had the order been supportable, in the view of the Court, as an exercise of the Board's power to remove the consequences of unfair labor practices, the *Greyhound* rule would have applied and the fact that third persons were incidentally affected by the order would have been immaterial. The opinion in that case nowhere suggests that persons other than employers are necessary parties to a determination whether an employer has committed unfair labor practices. That issue is triable only between the Government and the employer.

There is no merit in the suggestion that the equitable rule of indispensable parties prevents the enforcement of the order in question here. This Court, so far as we are aware, has never refused, at the suit of the Government, to enjoin the continuance of activity in violation of public rights on the ground that an absent party had an interest in the illegal activity. The *Consolidated Edison* case is not an exception to this line of authorities. The direction there refused enforcement was regarded as in no way making the command enjoining the unlawful activity any more effective (305 U. S. at 236). Moreover, the procedure before the Board is, except for possible qualifications where constitutional rights are concerned, within the control of Congress. There is slight basis, if any, for concluding that Congress intended to adopt as part of the statutory procedure a vague formula, not susceptible of accurate description, as to indispensable parties. The *Consolidated Edison* case does not hold to the contrary. The suggestion there advanced with respect to notice and hearing was prompted by doubts as to the constitutional adequacy of the procedure under the circumstances (305 U. S. at 233). The proceeding here in question arises under entirely different circumstances. There is no constitutional issue properly before this Court, and even if there were, there is no merit to it.

IV. The Board's complaint "states the charges" in respect to the unfair labor practices, as required by Section 10 (b), and does not "go beyond" the charges by alleging the commission of new unfair labor practices. No fatal variance arises from the fact that the complaint, which speaks as of a later date than the

charge, alleges that the unfair labor practices brought in question by the charge have continued down to the date of the issuance of the complaint. In any event, the function of a charge is to call the attention of the Board to an alleged violation of the Act. Should the Board, in the course of the investigation which Congress authorized it to conduct following the filing of charges (Section 11), find evidence of additional violations of the Act, it is entirely proper for the Board to allege such violations in its complaint without going through the useless formality of informing the charging party of its discoveries and suggesting the filing of supplementary charges. The contrary view confuses proceedings under the Act, which are in the name of the Government and seek the effectuation of an important national policy (*Agwilines, Inc.* v. *National Labor Relations Board*, 87 F. (2d) 146, 150 (C. C. A. 5th)), with proceedings concerned solely with private rights. See *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 25.

ARGUMENT

I

THE FINDINGS OF THE BOARD THAT PETITIONER HAD ENGAGED IN UNFAIR LABOR PRACTICES IN VIOLATION OF SECTION 8 (1), (2) AND (5) OF THE ACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE[3]

The findings of fact as to the unfair labor practices have been concurred in by the Board and the Circuit

[3] While the petition (pp. 10, 12) might be construed as challenging the Board's order of disestablishment of the Collective Bargaining Committee on the ground that the finding that petitioner dominated and interfered with the Committee in violation of Sec-

Court of Appeals and hence, under the accepted rule, will not be disturbed by this Court unless plainly erroneous. *Illinois Central, &c. Railroad* v. *Interstate Commerce Commission*, 206 U. S. 441, 466. See also *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 178; *United States* v. *Chemical Foundation*, 272 U. S. 1, 14; *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 542. A brief review will suffice to show that the findings are fully supported by the evidence.

The Union began its activities at petitioner's Brooklyn plant in early July 1937, when a number of petitioner's employees there requested Galvin, the president of the Union, to assist in organizing the plant (R. 874; 43, 240). By the evening of July 14, of the approximately 140 employees within the appropriate unit (R. 39),[4] 99 had signed applications for membership

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tion 8 (2) of the Act is not supported by substantial evidence, it does not attack the other provisions of the order, or the findings on which they are based, on that ground. The fact that the specifications of error set forth in the supporting brief (pp. 16–17) contain a general attack upon all other portions of the Board's order does not cure the limitations of the petition for certiorari, or constitute an effective challenge to the Board's findings and order with respect to the violations of Section 8 (1) and (5) of the Act. See *General Pictures Co.* v. *Electric Co.* 304 U. S. 175, 178. Nevertheless, in order that a complete picture may be before the Court, we shall summarize the evidence relating to the violation of those sections as well as that relating to the violation of Section 8 (2).

[4] There is no controversy with respect to the appropriate unit. The Board found that the unit should include all the production employees of the Company, including working foremen, but should exclude executive, supervisory, and office employees, salesmen, and truck drivers (R. 887).

(R. 875; 258, 272–275, 181, 241, 741). Each application designated the Union as the applicant's bargaining agent (R. 134). Consequently, as the Board found, on July 14, 1937, and thereafter, the Union represented a majority of the employees in the unit (R. 888).

On the evening of July 14 Galvin sent a telegraphic night letter to petitioner, requesting that a date be fixed for a bargaining conference (R. 875; 181, 391, 858). Petitioner received the telegram on the morning of July 15 (R. 875; 605–606, 717), but did not reply to it or acknowledge its receipt (R. 875; 44, 446–447). Instead, petitioner's president, Sanford, called a meeting of the employees on July 16, and, reading from a prepared paper,[5] informed the employees that they were "one big, happy family," that it "was not necessary" for them to "go to an outside union," and that he would not recognize an outside union (R. 875; 299, 327, 342, 351). He then said (R. 300):

> Before I leave this room I want you to pick your own committee, and after you pick your own committee you come downstairs into my office and bargain with us.

Supervisory employees also spoke, urging the employees to accept Sanford's suggestion (R. 875; 326–330, 297–301, 349–351), but the proposal was rejected (301–305, 359).

On July 19 or 20, Galvin and Picariello, one of the trustees of the Union, called at the plant and sought a collective bargaining conference with petitioner's offi-

[5] Counsel for petitioner, although requested to do so, declined to offer this paper in evidence (R. 329).

cials (R. 875; 44). They brought with them a proposed agreement which had been approved by the employees, and 109 signed applications (R. 875–876; 44–45, 258). Galvin offered to show the membership cards to Sanford, but when Sanford declared that he would not bargain with the Union even if it did represent a majority (R. 876; 144), Galvin withdrew the offer (R. 876; 45, 71–73, 144). Sanford asserted that he had some doubt as to the identity of the union officers, but he refused to telephone to either the American Federation of Labor or the Union offices to satisfy himself (R. 875–876, 59–60, 452). The Union's proposed agreement was not discussed at all (R. 144).

On the following afternoon, Sanford summoned to his office a group of about 14 employees who had been selected as best able to convey petitioner's views to the other employees (R. 876; 460, 626). These employees were told that "two very lovely young gentlemen who purported to be representatives of yours" had visited the plant that morning (R. 876; 459, 624). Sanford then stated that petitioner proposed to grant, beginning July 1, 1938, a 5-percent wage increase, time and one-half for overtime, and one week's vacation with pay (R. 876; 301–303), and asked the employees to contact the other workers and then come down and see him again (R. 303). The employees were dissatisfied with the offer, and it was dropped (R. 876; 305).

Shortly thereafter, Dorsey, petitioner's superintendent, selected about eight employees to circulate a petition nominating a committee to supersede the Union

as the collective bargaining representative of the employees (R. 876; 306–311, 357–361). The employees did not at first understand the purport of the petition, but as soon as they became aware of its effect they struck out their signatures and returned the petition to Dorsey (R. 876; 308–310, 356–361, 386–389). There is evidence that Dorsey was present when a number of signatures were obtained (R. 876; 309, 357–358). The petition eventually came to Healey, petitioner's assistant secretary, who destroyed it (R. 461).

On July 21 the Union filed with the regional office of the Board a petition asking to be certified as the exclusive collective bargaining agent of petitioner's production employees (R. 876; 47). A meeting of representatives of both petitioner and the Union was arranged for July 28 at the office of John T. McCann, a representative of the Board, and at that meeting, upon McCann's assurance that he was convinced that the Union represented petitioner's employees, Sanford and Healey agreed to meet with the Union representatives on the following day (R. 876–877; 464–466).

Accordingly, on July 29, Galvin, Anderson, Sklar, and Picariello, representing the Union, arrived at petitioner's plant, and met with Sanford, Carpentier (a vice president), Smylie, and Healey, representing petitioner (R. 877; 49, 467). Since petitioner raises no specific challenge to the finding of the Board, approved by the court below, that the "negotiations" of July 29 did not in fact constitute collective bargaining within the meaning of Section 8 (5) of the Act (see p. 13, n. 3,

supra), it is unnecessary t relate the events of the conference in detail. A gen ral statement, however, will illuminate petitioner's attitude.

Sanford, reading from a prepared statement, disposed of the Union's demands one by one, characterizing them as "impossible," "impractical," "preposterous," or "unworkable" (R. 877; 49–53, 94, 101). He then presented counterproposals similar to those made to the employees' group on July 20 (R. 877; 95–97, 100). The whole meeting was conducted in a manner designed to prevent discussion; whenever a point came up Sanford would simply reread the passage concerning which the question was asked (R. 877; 50, 84, 147, 197–198).

Equally significant was the revelation of petitioner's position with respect to recognition of the Union. At the very outset of the conference petitioner made it clear that under no circumstances would it make a contract with the Union (R. 877; 54, 101–102, 105, 203). Moreover, whereas on the preceding day Sanford had apparently agreed to recognize and bargain collectively with the Union as the exclusive representative of the employees, he now insisted that he would recognize the Union as the bargaining agent *for its members only* (R. 890; 50–52, 145–146). Indeed, there is evidence that Sanford did not regard the Union as possessing any representative authority at all, but considered the organization as a mere conduit whose sole function was "to bring the results of the conference to his employees" (R. 50) and then retire from the scene, leaving petitioner free to deal directly with its employees and

to require them to sign individual contracts of employment (R. 877; 50–51, 54, 96, 105, 135, 145, 150). When Galvin stated that the whole course of proceedings had a familiar ring, Sanford admitted that the Brooklyn Chamber of Commerce was advising them (R. 877; 57).[6] At the conclusion of the meeting Galvin made a request for a further conference, but no arrangements for it were made (R. 877; 112).

On August 2, Anderson telephoned Sanford and asked for a copy of the transcript of the July 29 meet-

[6] The reference is to the method of evading the National Labor Relations Act devised by L. L. Balleisen, of the Brooklyn Chamber of Commerce (see R. 719–721). Under the Balleisen formula the employer refuses to sign a contract with the union representing the majority of the employees, and insists instead that the contract be "executed between the company and each workman individually and not as a collective agreement with representatives of the employees, as provided by the act." *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 100 (C. C. A. 2d). The formula was condemned in the *Hopwood* case, *supra*, and in *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2d), and has been held by the Board to violate the Act in a number of cases. *Matter of Atlas Bag and Burlap Co.*, 1 N. L. R. B. 292; *Matter of Cating Rope Works, Inc.*, 4 N. L. R. B. 1100, consent decree enforcing Board's order entered October 3, 1938 (C. C. A. 2d); *Matter of Metropolitan Engineering Co.*, 4 N. L. R. B. 542; *Matter of the Jacobs Bros. Co., Inc.*, 5 N. L. R. B. 620; *Matter of Federal Carton Corp.*, 5 N. L. R. B. 879, consent decree enforcing Board's order entered October 25, 1938 (C. C. A. 2d); *Matter of David E. Kennedy, Inc.*, 6 N. L. R. B. 699; *Matter of Art Crayon Co., Inc.*, 7 N. L. R. B. 102; *In the Matter of Eastern Footwear Corp. etc.*, 8 N. L. R. B. 1245; *In the Matter of American Numbering Machine Co.*, etc., 10 N. L. R. B. 536; *In the Matter of Centre Brass Works, Inc.*, etc., 10 N. L. R. B. 1060; *In the Matter of Fanny Farmer Candy Shops, Inc.*, etc., 10 N. L. R. B. 288; *In the Matter of National Meter Co., etc.*, 11 N. L. R. B. 320.

ing, which Sanford had promised to give the Union (R. 878; 162–163). Sanford informed him that the notes had been jumbled, and that the stenographer had left on her vacation (R. 878; 163, 188). Upon Anderson's request, another meeting was set for August 5 (R. 878; 163–164).

During the morning, however, petitioner's employees stopped work and gathered in the shipping room away from the machines, where they remained for the balance of the afternoon (R. 878; 312). The strike was not called by the Union, but rather was a spontaneous expression of dissatisfaction with the course of the negotiations (R. 878; 115–121; 243–244, 311–312). Although petitioner immediately called police and hired guards, there was no violence, and the employees left the plant later in the afternoon (R. 878; 316–317, 513).

Petitioner, of course, was under an obligation to bargain notwithstanding the strike,[7] but there is convincing evidence to support the finding of the Board (R. 889–890) that it failed to do so upon request during that period. Anderson learned of the strike about 1 p. m.

[7] Section 2 (3) of the Act; *Black Diamond S. S. Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875, 879 (C. C. A. 2d), cert. denied, 304 U. S. 579; *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), cert. denied, 302 U. S. 731; *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179 (C. C. A. 6th); *Titan Metal Mfg. Co.* v. denied, 304 U. S. 575; *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 22 (C. C. A. 9th); *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 867, 868 (C. C. A. 2d), cert. denied, 304 U. S. 576; cf. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345.

on August 2 (R. 878; 162–163, 167, 184). He immediately called Sanford and offered to do anything in his power to help settle it (R. 878; 168, 223). Sanford, however, accused Anderson of having called the strike, which Anderson denied, and refused to talk with him further (R. 878; 168). Anderson then went to the plant and expressed to Healey his desire to help settle the strike. Upon inquiry he was told by Sanford through Healey that the August 5 meeting had been called off (R. 879; 169). Anderson's appeal to the New York State Labor Relations Board was likewise without result, the Board representative stating that he had been unable to get the executives of the company to agree to meet with the Union (R. 879; 166, 171–172, 237).

Anderson also wrote to petitioner on August 2 (R. 848) asking for an immediate conference. Petitioner's answer (R. 849) announced the cancellation of the August 5 conference, and stated that no future time would be set until "we have a letter from you informing us as to whether or not this strike was instigated, ordered or approved by your Union, or any official or officials of your Union" (*id.*). Anderson did not reply, both because he had orally disclaimed responsibility, and because he was afraid a letter such as petitioner had requested would be used to alienate employees from the Union (R. 879; 219, 222, 232–233).

During the strike petitioner's hired guards ingratiated themselves with the pickets, buying them beer and lunches, and at the same time attempted to persuade them to call off the strike (R. 879–880; 320–321, 362–

363, 604–605). Healey himself told the pickets that the Union was no good and a "racketeer," and that petitioner would close up and move to Philadelphia before it would recognize the Union (R. 880; 246, 251–252). These intimidating and coercive statements were in plain violation of Section 8 (1) of the Act.*

On August 25 petitioner reopened the plant (R. 88, 520). On August 27 petitioner sent a letter (R. 850, 295) to each employee, requesting him to return to work on August 30, and stating that "all available means of protection" would be afforded. On the same day Healey, in reply to an anonymous telephone call, met one William McCann and two other employees in the Brooklyn Y. M. C. A. (R. 880; 525). The employees stated that they were anxious to return to work, and asked whether they could have their own committee and bargain with petitioner. Healey replied that if they could obtain the authorization of a majority of the employees petitioner "would be very happy to deal with" them (R. 880; 526–527).

A few days after he returned to work McCann again asked Healey about the procedure for getting together a collective bargaining committee. Healey told them he could not go into it, but to get a committee which

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* See *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, 75, enforcing 1 N. L. R. B. 425, 430; *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8th); *National Labor Relations Board* v. *Lund*, 103 F. (2d) 815 (C. C. A. 8th); *Matter of Remington Rand, Inc.*, 2 N. L. R. B. 625, 626, 640, 653, 656, enforced *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d).

could be demonstrated to represent a majority of the employees (R. 880; 569). On September 9, McCann again came to Healey for assistance in drawing a letter of authorization which the employees could sign. Healey refused to help, but sent him to Sanford (R. 881; 576). Sanford then dictated the form (R. 866a), designating a committee of workers as the collective bargaining representatives of the workers, and revoking any authority to any other organization. This letter was circulated among the employees by McCann, and on September 9 was presented to Sanford and Healey with 110 signatures besides those of the members of the Committee (R. 881; 696; 866a).

Thus petitioner participated directly in the creation and promotion of the Committee. But even with less overt acts of sponsorship, the Committee could not be regarded as the free choice of the employees. Petitioner had shown unswerving opposition to an outside organization and a pronounced desire for an "inside" plan, and had driven its position home with flagrant unfair labor practices against the Union. An "inside" organization formed under these circumstances, as the Committee was, could not but be a response to petitioner's interference and the subject of its domination and support. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 268–271; *National Labor Relations Board* v. *Pacific Lines*, 303 U. S. 272, 274; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *National Labor Relations Board* v. *The Falk Corpora-*

tion, No. 460, this Term; *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515; and cases cited *infra*, p. 26, n. 11.

The subsequent relations of the Committee with petitioner indicate its continued lack of independence. On September 10, the Committee sought to bargain with petitioner (R. 882; 580–581). No question was raised as to its authority to represent the employees (R. 882; 698). The Committee asked what could be done about wages, and Sanford read and explained to them a contract containing the same proposals that had been offered on July 20 and July 29 (*supra*, pp. 15–16, 17; R. 882; 581–582; cf. R. 702). The Committee's only requests related to pay for holidays and a reduction of the term of the contract from 5 to 3 years, which were accepted with modification (R. 882; 583–584, 586–587). The contract finally agreed to purports to be made between petitioner, the Committee, and "each and every one of the employees" of petitioner (R. 850).[9] Healey furnished copies of the agreements (mimeographed by petitioner, R. 688, 738) to the members of the Committee, telling them to "explain it, to the best of their ability" to the employees and giving explicit instructions as to the manner in which the agreements were to be executed (R. 586–587). Carmela Tesora, one of the returning employees, testified that Sanford in-

[9] The Board found (R. 884), and the lower court (R. 911–912) confirmed the finding, that the signing of the contracts was "a condition of reemployment" of the returning employees.

formed the employees that only those who signed would receive the five percent wage increase granted by the contracts or "protection" in their jobs (R. 375, 381).[19] Tesora's testimony was inferentially confirmed by Healey, who admitted that the wage increase was to be operative "From the signing of the contract that we were prepared to offer them * * *" (R. 582). The Board, upon the basis of this testimony and the inferences to be drawn from the conduct of petitioner described above, found that "The benefits of the contract under consideration were limited to those employees who signed" (R. 886), and that "the signatures to the contracts were procured by coercion and intimidation" (R. 892).

Several subsequent incidents reveal petitioner's domination of the Committee. For example, when Garone and 13 other employees returned to work, they asked the Committee if their group could have a representative upon the Committee. The Committee replied that they would have to see Sanford. The latter replied: "I am sorry, the committee has been picked already. There is enough right now on the committee" (R. 882–883; 761–764, 597). On another occasion Garone asked McCann, as a member of the Committee, to take up a grievance with the management. McCann refused, stating: "we cannot argue for you" (R. 883; 764–765). Sanford himself told several employees

[19] It was stipulated that three other witnesses then present in the hearing room would, if called upon to testify, have given the same testimony as Tesora (R. 386).

that they would not get the 5-percent increase and that he would not "protect" their jobs if they did not sign the individual contracts (R. 883; 375, 381).

The violations of the Act inherent in the making and execution of the contracts are dealt with in Point II, *infra*. In addition to these violations, however, the foregoing summary of the Board's findings and the evidence upon which they were based makes abundantly clear that the general challenge made by petitioner to the Board's findings and to the orders based thereon cannot be sustained. To recapitulate:

1. *The violation of Section 8 (2).* In considering the propriety of the Board's findings that petitioner interfered with and dominated the formation and administration of the Committee, one should bear in mind that the Committee was merely the end-result of a planned program of action—the Balleisen formula (*supra*, p. 18, n. 6)—expressly designed to make possible the establishment of such a company-dominated bargaining medium. Among the acts which made up this program are the following: the meetings called by Sanford following the first appearance of the Union, upon which occasions petitioner registered its disapproval of "outside" unions and its desire for an "inside" organization; the selection by petitioner of the first committee to convey its views to its employees; the petition sponsored by Dorsey to "supersede" the Union; the petitioner's active participation in the formation of the Committee; petitioner's domination of the sham "negotiations" with the Committee; the use of the Committee as an instrument in bringing about the execution

of the individual contracts; Sanford's determination of the personnel of the Committee, as indicated by his veto of the inclusion of a member of the Garone group. These actions, which for the most part stand unrefuted in the record, amply support the Board's finding of violation of Section 8 (2) of the Act."

2. *The violation of Section 8 (5).* The evidence supporting the Board's finding that petitioner refused to bargain collectively with the Union at the meetings of July 20 and 29, and thereafter during the strike, is

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"*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board* v. *Pacific Lines*, 303 U. S. 272; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, No. 20, this Term; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), cert. denied, 304 U. S. 576; *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th); *National Labor Relations Board* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th); *National Labor Relations Board* v. *J. Freezer & Son, Inc.*, 95 F. (2d) 840 (C. C. A. 4th); *National Labor Relations Board* v. *Wallace Mfg. Co.*, 95 F. (2d) 818 (C. C. A. 4th); *Virginia Ferry Corp.* v. *National Labor Relations Board*, 101 F. (2d) 103 (C. C. A. 4th); *Cudahy Packing Co.* v. *National Labor Relations Board*, 102 F. (2d) 745 (C. C. A. 8th), cert. denied, October 9, 1939; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3d); *Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87 (C. C. A. 10th); *National Labor Relations Board* v. *Calten*, 105 F. (2d) 179 (C. C. A. 6th); *Titan Metal Mfg. Co.* v. *National Labor Relations Board*, 106 F. (2d) 254 (C. C. A. 3d); certiorari denied, December 4, 1939; *National Labor Relations Board* v. *Griswold Mfg. Co.*, decided September 21, 1939 (C. C. A. 3d); *Republic Steel Corp.* v. *National Labor Relations Board*, decided November 8, 1939 (C. C. A. 3d); *National Labor Relations Board* v. *H. E. Fletcher Co.*, decided December 18, 1939 (C. C. A. 1st).

overwhelming (*supra*, pp. 17–21), and need not here be repeated. Petitioner does not even discuss the evidence upon which this finding is based, contending (Brief, p. 11) that any such discussion would be "futile" and "immaterial" because "on September 9, 1937 the employees had repudiated it (the Union) as their exclusive bargaining agent." The "repudiation" which petitioner asserts renders "immaterial" its clear violation of Section 8 (5), is the signing by the employees of the petition (*supra*, p. 22) which purported to designate the Collective Bargaining Committee and to revoke all prior designations of representatives. We have seen (*supra*, pp. 22–23) that the evidence amply supports the Board's finding (R. 892) that "the petition was drawn by the Company and circulated at its instance in order to effectuate the illegal acts of" petitioner. The Board was therefore fully warranted in ruling that "the petition has no significance as an expression of the employees' choice of an agency for collective bargaining" (R. 892).

Moreover, petitioner's contention is refuted by elementary considerations as to the character and purpose of company-dominated labor organizations. Such organizations are sponsored and supported by employers for the purpose of defeating their employees' freedom of choice in the selection of collective-bargaining representatives. It is a contradiction in terms to assert that employees can "voluntarily" choose to be represented by an organization whose existence and membership are attributable to the employer's illegal interference

and coercion, and which is merely an instrument of the employer's antiunion policy. The "choice" of such an organization cannot possibly be voluntary; it is, in fact, no choice at all. *National Labor Relations Board* v. *The Falk Corporation*, No. 460, this Term.[12]

Effectuation of the policies of the Act requires that the consequences of unfair labor practices be removed. *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, No. 20, this Term. Petitioner's contention, far from permitting violations of Section 8 (5) to be remedied, would encourage further unfair labor practices. The argument, in short, is that the consequences of a violation of Section 8 (5) of the Act may be evaded by the expedient of violating Section 8 (2). This Court should not give its approval to a result so damaging to the effectuation of the statutory purpose. See *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 570; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 869, 870 (C. C. A. 2d), cert. denied, 304 U. S. 576; *National Labor Relations Board* v. *Colton*, 105 F. (2d) 179, 181 (C. C. A. 6th); cf. *International Associ-*

[12] See *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270; *National Labor Relations Board* v. *Pacific Lines*, 303 U. S. 272, 275; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 262; *Newport News Shipbuilding & Dry Dock Co.* v. *National Labor Relations Board*, No. 20, this Term; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 233; *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515.

ation of Machinists v. *National Labor Relations Board*, decided November 20, 1939 (App. D. C.).

3. *The violation of Section 8 (1).* The numerous violations of Section 8 (1) of the Act also stand plainly revealed—the preliminary interference by Sanford with the exercise by the employees of their right to select the Union as their bargaining representative, the first company-inspired but fruitless petition for an inside bargaining committee, the interference with the employees during the strike, as well as the other incidents described above. The cease and desist portions of the Board's order based upon these violations were consequently required by the Act (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265); and were properly ordered to be enforced by the court below (R. 914, 915).

II

PETITIONER WAS PROPERLY ORDERED TO DISCONTINUE ITS CONTRACTS WITH THE COMMITTEE AND WITH THE INDIVIDUAL EMPLOYEES

Subsequent to the reopening of the struck plant, petitioner engaged with the dominated committee in what it insists was "collective bargaining" (see pp. 23–24, *supra*). The result of the process was the execution of a series of identical written agreements. Each contract (Bd. Exh. 10, R. 850–857), although it purports to embody "the principles of collective bargaining in its fullest and truest sense" (R. 851), requires the signatures of the individual employee as well as of the Com-

mittee (R. 850, 857).[13] Copies of the contract were furnished to each employee and were signed in duplicate, one copy being retained by the employee, the other being returned to petitioner (R. 587, 589). Each instrument is entire and inseverable; it is not, as petitioner implies (Brief, pp. 28, 30) two distinct agreements, one between petitioner and the Collective Bargaining Committee, the other between petitioner and the individual employee. The "rights" and "duties" of the Committee and the individual employees, respectively, are not distinct and independent, but are completely intertwined. Thus, the "right" of an employee to participate in the contract is dependent upon his designation of the Committee as his collective bargaining representative (R. 851). Any changes in wages, facilities of employment, and hours can be negotiated only with the consent of the Committee (R. 855–856). The contract contemplates the joint participation of Committee and employees; a severance as to either would work the destruction of the instrument.

The contracts are not of an unfamiliar pattern. Contracts of very similar character, known as "Balleisen

[13] It should be noted that the issue is not whether an employer, guilty of no unfair labor practice, may lawfully enter into individual contracts of employment with such of his employees as freely choose to make such contracts, but whether the coercion and interference practiced by petitioner and the illegal terms which the contracts contain have rendered the contracts—whether they be deemed "individual" or "collective"—invalid. Assuming, *arguendo*, that an employer may under certain circumstances enter into individual contracts with his employees (cf. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45), it is self-evident that such contracts are as capable of being vitiated by unfair labor practices as are collective agreements.

contracts" (R. 57, 719–21), have engaged the attention of the Board and the courts in a number of cases. In every case, including the present, they have been condemned as violative of the Act.[14] Petitioner here, by paragraph 1 (c) of the order of the Board, is required to cease and desist from giving effect to its contracts with the Committee and the individual employees and by paragraph 2 (b) to inform in writing the Committee and each of its employees that the contract is violative of the Act and will no longer be enforced (R. 895–896). The essential direction to cease giving effect to the contracts is supportable both under the mandatory duty of

[14] *Court cases: National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2d); *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. (2d) 61 (C. C. A. 2d). *Board cases: Matter of Atlas Bag and Burlap Company, Inc.*, 1 N. L. R. B. 292; *Matter of Hopwood Retinning Co.*, 4 N. L. R. B. 922, aff'd, *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2d); *Matter of Cating Rope Works, Inc.*, 4 N. L. R. B. 1100, consent decree enforcing Board's order entered October 3, 1938 (C. C. A. 2d); *Matter of Metropolitan Engineering Company, Inc.*, 4 N. L. R. B. 542; *Matter of American Manufacturing Company*, 5 N. L. R. B. 413, aff'd, *National Labor Relations Board* v. *American Mfg. Company*, 106 F. (2d) 61 (C. C. A. 2d); *Matter of the Jacobs Bros. Company, Inc.*, 5 N. L. R. B. 620; *Matter of Federal Carton Corp.*, 5 N. L. R. B. 879, consent decree enforcing Board's order entered October 25, 1938 (C. C. A. 2d); *Matter of David E. Kennedy, Inc.*, 6 N. L. R. B. 699; *Matter of Art-Crayon Company, Inc.*, 7 N. L. R. B. 102; *In the Matter of Eastern Footwear Corp., etc.*, 8 N. L. R. B. 1245; *In the Matter of American Numbering Machine Co., etc.*, 10 N. L. R. B. 536; *In the Matter of Centre Brass Works, Inc., etc.*, 10 N. L. R. B. 1060; *In the Matter of Fanny Farmer Candy Shops, Inc., etc.*, 10 N. L. R. B. 288; *In the Matter of National Meter Co., etc.*, 11 N. L. R. B. 320.

the Board to require an employer to cease unfair labor practices (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265) and as an exercise of its power to direct such affirmative action as will effectuate the policies of the Act.

A. THE MANDATORY DUTY OF THE BOARD TO ENJOIN UNFAIR LABOR PRACTICES

1. *The contracts were part of petitioner's program of unfair labor practices*

Our summation of the evidence under Point I, *infra*, pp. 13–29, makes unnecessary a further description of the manner in which petitioner obtained the contracts from the Committee and the employees. As the Board found, the contracts were imposed by petitioner upon its employees through the instrumentality of the company-dominated Committee in order "to eliminate the Union as the collective bargaining agency of its employees" (R. 884, 890, 892). On these findings, the contracts were clearly illegal under the Act and fell by reason of such illegality. *Association of Rock Island, etc., Employees* v. *Lowden*, 15 F. Supp. 176, affirmed, 86 F. (2d) 458 (C. C. A. 10th), certiorari denied, 300 U. S. 659; *United States* v. *Reading Co.*, 226 U. S. 324; *Swift & Co.* v. *United States*, 196 U. S. 375, 396; *Aikens* v. *Wisconsin*, 195 U. S. 194, 205, 206; *Schenck* v. *United States*, 249 U. S. 47, 52; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 465–466. Orders of the Board requiring employees to cease giving effect to such con-

tracts have uniformly been enforced by the Circuit Courts of Appeals.[16]

2. *The terms of the contracts violate the Act*

Apart from their intimate connection with petitioner's campaign to destroy collective bargaining through the Union, the contracts impose illegal restraints upon the exercise by the employees of rights guaranteed in Section 7 of the Act. The critical portions of each contract are contained in paragraph SEVENTH, which reads as follows:

> Any Employee has the right to join any union of his own choosing or to refrain from joining any union. The Employees or any of them shall not and have not the right to demand a closed shop or a signed agreement by his Employer with any union. This does not in any way restrain the Employees from having a union representing them or advising them in collective bargaining, and the Employer has the absolute and unquali-

[16] *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2d); *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2d); *National Labor Relations Board* v. *Ronni Parfum, Inc.*, 104 F. (2d) 1017 (C. C. A. 2d), enforcing 8 N. L. R. B. 323; *Titan Metal Mfg. Co.* v. *National Labor Relations Board*, 106 F. (2d) 254 (C. C. A. 3d), certiorari denied, December 4, 1939, enforcing 5 N. L. R. B. 577, 596; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3d), certiorari denied, November 6, 1939; *National Labor Relations Board* v. *Eagle Mfg. Co.*, 99 F. (2d) 930 (C. C. A. 4th), enforcing 6 N. L. R. B. 492; *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8th); *National Labor Relations Board* v. *H. F. Fletcher Co.*, decided December 18, 1939 (C. C. A. 1st). See also *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652 (C. C. A. 9th); *International Association of Machinists* v. *National Labor Relations Board*, decided November 20, 1939 (App. D. C.).

fied right to hire or discharge any Employee or Employees for any reason and regardless of his or their affiliation or nonaffiliation with any union. It is mutually understood and agreed that the Employer will not discharge Employees because of legitimate union activities conducted outside of company time or company property or because of affiliation with any union. It is further mutually agreed and understood that the collective bargaining committee or the Employees will not intimidate or coerce employees and also will not solicit membership in any union on corporation time or plant property.

A discharged Employee may submit to the Employer facts indicating that his discharge was unreasonable, and the Employer may at its discretion reinstate said Employee, it being the intention of the Employer that Employees be not unjustly discharged. It is strictly understood and agreed, however, that the question as to the propriety of an Employee's discharge is in no event to be one for arbitration or mediation and that any action of reinstatement, if any, will be taken voluntarily by the Employer if it deems such reinstatement advisable.

It will be observed that this paragraph contains verbiage purporting to assure employees of their right to join or to be represented by a union. At the same time, the paragraph places such restraints upon the right of effective representation by a union that the "right" purportedly guaranteed becomes meaningless.

(a) The clause which requires the employees to agree not "to demand * * * a signed agreement by his Employer with any union" is vulnerable under the Act upon at least two counts. First, it is well estab-

lished that the fundamental purpose of collective bargaining negotiations is "the making of contracts with labor organizations." *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 236; *National Labor Relations Board* v. *Sands Mfg. Company,* 306 U. S. 332, 342. Such contracts, technically known as trade agreements, are almost invariably reduced to writing by the parties and signed, a practice which manifestly furthers the statutory objective of industrial peace by eliminating uncertainty as to the terms of the contract, by definitely establishing its binding character, and in other ways stabilizing the employer-employee relationship.[16] The provision of the present contracts which obligates the employees to re-

[16] The exceptional efficacy of the collective labor agreement in promoting peace in industry has been recognized by this Court. In *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 555, n. 7, the Court, citing the remarkable absence of labor strife in the railroad industry since the passage of the Railway Labor Act, stated as follows:

It is the belief of the National Mediation Board that peace in the railroad industry is largely due to the 3,485 collective agreements covering rates of pay, rules, and working conditions, which were filed by June 30, 1936 [see National Mediation Board, Second Annual Report for the Fiscal Year Ended June 30, 1936, p. 26]. In its First Annual Report for the Fiscal Year Ended June 30, 1935, it concluded (p. 36): "The absence of strikes in the railroad industry, particularly during the last two years when widespread strikes, the usual accompaniment of business recovery, prevailed throughout the country, is to be explained, primarily not by the mediation machinery of the Railway Labor Act, but by the existence of these collective labor contracts. For, while they are in existence, these contracts provide orderly, legal processes of settling all disputes as a substitute for strikes and industrial warfare.

That the "collective labor contracts" which are thus credited with responsibility for this excellent record are written agree-

nounce the right to demand "a signed agreement * * * with any union" makes impossible the attainment of this normal and desirable objective of collective bargaining. A second objection to the quoted provision of paragraph SEVENTH is its flagrantly discriminatory character. It will be observed that the provision does not eliminate signed contracts as such, but only signed contracts "with any *union.*" Since the Congressional objective in encouraging the "practice and procedure of collective bargaining" was to promote "the making of contracts with *labor organizations,*"[17] not with company-dominated collective bargaining committees or, through them, with individual employees, it is obvious that the quoted provision of paragraph SEVENTH is in conflict with the public policy of the Act. See the *Consolidated Edison* case, *supra,* at 236. Furthermore, the inevitable effect of such discrimination is to impress the employees with petitioner's hostility toward labor unions and to warn them that if they choose a union—and only if they choose a union—to represent them in collective bargaining, their representative will be denied the important privilege of embodying the fruits of collective bargaining in a signed agreement. The evident effect of such a tactic is to lessen the value to the employees of union mem-

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ments is shown by the fact that the Railway Labor Act requires all carriers to file "a *copy* of each contract with its employees" with the National Mediation Board (Sec. 5, Third (e), Railway Labor Act of 1934, c. 691, 48 Stat. 1185, 45 U. S. C. § 155). See *First Annual Report of the National Mediation Board* (Govt. Printing Office, Wash., D. C.), pp. 32–36.

[17] Italics ours.

bership, impair the prestige of the union among the men, and discourage membership in the Union and other bona fide labor organizations.

(b) Paragraph SEVENTH further violates the Act in its provisions with respect to the right of employees to protest against discrimination in hire or discharge. The contract gives petitioner "the absolute and unqualified right to hire or discharge any Employee or Employees for any reason and regardless of his or their affiliation or non-affiliation with any union" (R. 854). It is true that this language is followed by the statement:

> It is mutually understood and agreed that the Employer will not discharge employees because of legitimate union activities conducted outside of company time or property, or because of affiliation with any union (R. 854).

We need not consider whether this proviso coincides with the rights of employees under the Act. The "guarantee" is rendered meaningless by the ensuing paragraph:

> *A discharged employee* may submit to the employer facts indicating that his discharge was unreasonable, and the Employer may *at its discretion* reinstate said Employee * * *. It is strictly understood and agreed, however, that *the question as to the propriety of an employee's discharge is in no event to be one for arbitration or mediation* and that any action of reinstatement, if any, will be taken voluntarily by the employer, if it deems such reinstatement advisable (R. 855). [Italics added.]

The court below, in its opinion, said of this provision of the contract: "It may perhaps be read as not meant to forbid negotiations regarding discharges; but only to eliminate the remedies mentioned. Even so 'mediation' is close to 'negotiation', and the preceding declaration that a discharged workman may put his case personally before the company suggests that the company union shall not act for him" (R. 911). We add that, in our opinion, the provision shows a clear purpose, not only that "the company union" shall be barred from protesting an employee's improper discharge, but that the question of the propriety of a discharge shall not be raised through representatives at all, but only by the affected employee himself. Petitioner's argument, advanced at page 37 of its brief, that "the right of a discharged employee to submit to the employer facts indicating that his discharge was unreasonable is expressly secured by Section 9 (a) of the Act" furnishes support for this construction. It may be conceded that under Section 9 (a) an employee who has been discriminatorily discharged *may*, if he chooses, himself present his grievance to the employer. But it cannot be thought that Section 9 (a) decrees that such direct dealing shall constitute the exclusive method of presenting a grievance of this character, and thus prohibits the aggrieved employee from seeking redress through the intermediacy of his chosen representatives. The discriminatory discharge of an active union member is not confined in its effect to the employee discharged, but operates as a threat to the liberty of action of all employees susceptible of similar discrimination,

and tends to discourage membership in unions generally. *National Labor Relations Board* v. *Biles Coleman Lumber Co.*, 98 F. (2d) 18, 23 (C. C. A. 9th). The right of employees to seek redress against such discharges through their collective bargaining representatives is a part of the right "to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection" (Section 7 of the Act).

(c) Another illegal aspect of the contract is the requirement that the employees pledge themselves not to "demand" a closed-shop or a signed agreement. The argument may best be stated in the language of the court below:

> It is indeed lawful for a union to agree to an open shop; but it is another thing to agree not to propose changing to a closed shop for the period of the agreement, and the word, "demand", covered a proposal. The same is true of the stipulation not to "demand" a signed agreement. A party to a contract does not break it, when he proposes to the other party that conditions have so far changed as to make desirable a change of the contract. * * * the right to propose the change is secured by statute as part of the right to negotiate (R. 911).

Petitioner challenges these conclusions, urging, in effect, that a labor agreement, once made, may not be altered by negotiation of the parties "for the duration of [the] agreement" (Brief p. 38). This contention is foreclosed, however, by the express declaration of this Court in *National Labor Relations Board* v. *Sands Mfg. Company*, 306 U. S. 332, 342, that "the Act im-

poses upon the employer the further obligation to meet and bargain with his employes' representatives *respecting proposed changes of an existing contract . . .*" (Italics added.) In addition, we need only point out that the logic of petitioner's argument would permit an employer to obtain from his employees a promise *never* to seek a change in the terms of a wage agreement, or else to seek no change for a period of time sufficiently long to result in the effectual nullification of the right of collective bargaining. A construction of the Act which would enable employers to prohibit their employees from proposing mutual revision of the terms of a contract which has become unworkable or inequitable would lead, not to "allaying disputes and harmonizing labor relationships," as petitioner imagines (Brief p. 38), but to the unrest and dissatisfaction which expresses itself in strikes, boycotts, and other disruptive methods of attempted alteration of the industrial *status quo*. Particularly is this true of a contract, such as the present one, having a term of three years.

(d) Petitioner (Brief pp. 44–45) would justify the restraints on self-organization and collective bargaining embodied in these contracts by reliance upon the alleged right of employees to "waive" the guarantees of the Act. The short answer to this contention is that the "negotiations" for the contract were conducted through the instrumentality of the company-dominated Committee (*supra*, pp. 23–24). "Collective bargaining is reduced to a sham when the employer sits on both sides of the table by supporting a particular organization

with which he deals".[18] An agreement reached through such a process cannot be regarded as a voluntary expression of the employees' intentions. It would nullify the purposes of the Act to permit an employer thus to force his employees to waive rights intended to prevent employer interference.

Equally conclusive is the fact that the provisions of Section 7 of the Act, protecting the right to self-organization and collective bargaining, are not susceptible of being "waived" by employees. The Act is an exercise of public authority directed to the accomplishment of an important national objective—the protection of the channels of interstate commerce against strikes and other obstructions. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.[19] The right of employees to self-organization and collective bargaining is the keystone of the structure. The contention that the right may be waived is derived from a misapprehension of the objectives of the Act. No one may "waive" a right which has been granted, not as a personal privilege, but in furtherance of a valid public policy. See *Grandview*

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[18] House Report No. 1147, 74th Cong., 1st Sess., p. 18.

[19] "No private right of action is contemplated. Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential * * *." House Report No. 1147, 74th Cong., 1st Sess., p. 24.

See also *Agwilines, Inc.* v. *National Labor Relations Board*, 87 F. (2d) 146, 150 (C. C. A. 5th); *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179 (C. C. A. 6th); *Blankenship* v. *Kurfman*, 96 F. (2d) 450, 454 (C. C. A. 7th). Compare *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 25.

Inland Fruit Co. v. *Hartford Fire Ins. Co.*, 66 P. (2d) 827, 834, 189 Wash. 590, 109 A. L. R. 1472; *Day* v. *McAllister*, 15 Grey (Mass.) 433, 434. Compare *Doherty* v. *Bartlett*, 81 F. (2d) 920, 926 (C. C. A. 1st).

The conclusion is inevitable that the contracts were invalid on their face because the conditions they impose violate the Act. As a consequence, the Board was under a mandatory duty to require petitioner to cease and desist from continuing to violate the Act by giving effect to them. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. Compare *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2d).

B. THE POWER OF THE BOARD TO ORDER AFFIRMATIVE ACTION TO EFFECTUATE THE POLICIES OF THE ACT

The order is likewise valid as an appropriate exercise of the Board's power under Section 10 (c) to require such affirmative action as will effectuate the policies of the Act. The record in the present case supports each finding which this Court in the *Consolidated Edison* decision, 305 U. S. 197, 236, indicated would furnish a basis for an order to set aside employment contracts.

1. The contracts in question here were a consequence of unfair labor practices on the part of petitioner. The Board found specifically that the contracts were made through the instrumentality of a labor organization dominated by petitioner in violation of Section 8 (2) (R. 892); that the company-dominated Committee was used by petitioner "to obtain the signatures of the employees to the individual contracts" (R. 884);

and that the contracts were imposed upon the employees by petitioner in order "to eliminate the Union as the collective bargaining agency of its employees" (R. 890). These findings, which were approved by the court below (R. 910, 911–912), are fully supported by the evidence (*supra*, pp. 21–25). Orders of the Board requiring the termination of contracts similar to the present ones, made with or through the instrumentality of company-dominated labor organizations, have without exception been upheld by the Circuit Courts of Appeals.[20]

2. The second criterion is likewise clearly met. We need not again enumerate the respects in which, in the words of the Board's finding, "the limitations on union activity imposed by the contracts interfered with, restrained and coerced" petitioner's employees "in the exercise of their rights to self-organization and collective bargaining" (R. 892, 886–887). A failure to terminate these illegal restraints will seriously "thwart" the policies of the Act.

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[20] *National Labor Relations Board* v. *H. E. Fletcher Co.*, decided December 18, 1939 (C. C. A. 1st); *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2d); *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2d); *National Labor Relations Board* v. *Ronni Parfum, Inc.*, 104 F. (2d) 1017 (C. C. A. 2d), enforcing 8 N. L. R. B. 323; *Titan Metal Mfg. Company* v. *National Labor Relations Board*, 106 F. (2d) 254 (C. C. A. 3d), certiorari denied, December 4, 1939, enforcing 5 N. L. R. B. 577, 596; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3d), certiorari denied, November 6, 1939; *National Labor Relations Board* v. *Eagle Mfg. Co.*, 99 F. (2d) 930 (C. C. A. 4th), enforcing 6 N. L. R. B. 492; *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8th).

3. The discontinuance of the contracts is necessary, moreover, in order to make effective the order to cease the unfair labor practices. If petitioner is allowed to continue its observance of the contracts it cannot cease and desist from "dominating or interfering with * * * and from contributing * * * support to" the Committee (R. 894), since the recognition granted in the contract is a powerful continuing form of interference and support. The *Pennsylvania Greyhound case*, 303 U. S. at 267, 271; see *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, No. 20, this Term. This conclusion applies with equal force to the provision explicitly requiring petitioner to cease and desist from "recognizing" the Committee "as the representative of any of the employees for the purpose of dealing with" petitioner concerning employment matters (R. 895).

Similarly, a failure to set aside the contracts, both in their "individual" and "collective" aspects, will render wholly unenforceable that provision of the order which requires petitioner to cease "refusing to bargain collectively" with the Union "as the exclusive representative of its production employees at its Brooklyn, New York, plant" (R. 895). Obviously, petitioner cannot recognize and treat with both the Committee and the Union. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44–45.

Finally, the continuance of the illegal limitations on union activity which the contracts contain (*supra*, pp. 33–42) would nullify that portion of the order which commands petitioner to cease from "interfering with,

restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7" of the Act (R. 895). We submit, therefore, that not only will the invalidation of the present contracts make the order to cease and desist more effective, but that unless the contracts are terminated the entire order of the Board will be rendered nugatory.

III

THE ORDER TO DISCONTINUE THE CONTRACTS DID NOT VIOLATE THE FIFTH AMENDMENT

Petitioner asserts (Pet. for Certiorari, pp. 8–9, 12; Brief, pp. 27–33, 45–50) that it was deprived of due process of law with respect to the order directing it to discontinue the contracts in that (1) counsel for the Board stipulated that the contracts were not in issue, and (2) no notice and hearing was afforded to the Committee or the individual employees.

1. The conclusive answer to the first contention is, simply, that there was no such stipulation. The portion of the record containing the alleged "stipulation" is as follows (R. 380–381; Mr. Mann was attorney for petitioner; Mr. Sklar was attorney for the Union; Mr. Graham was attorney for the Board):

> Q. (By Mr. Mann.) Miss Tesoro, the amended charge says that the National Licorice Company

has by means of threats and intimidations, coerced, and attempted to coerce its employees into signing individual contracts. In the first place, do you understand what those words mean, that I just read?—A. No.

Q. Well, "coerce" means to force.

* * * * *

Q. (By Mr. Mann.) "Intimidate" means about the same as threats. Did anybody threaten you or force you to sign this contract?—A. No.

Mr. SKLAR. Objected to, Mr. Examiner, on the ground that this charge applied to August 2nd and has nothing to do with the contract of September 20th.

Mr. MANN. It talks about individual contracts, and they offered in evidence a contract.

Mr. SKLAR. Those contracts referred to are the ones mentioned by Mr. Sanford on July 29th.

Mr. GRAHAM. In order to get the right effect, we are going to let these in. Complaint embodies none of these contracts.

Mr. MANN. May I ask on the record whether they want to go into this question of contracts under their amended charge. If not, let's forget about it.

(482) Trial Examiner KOREY. I have ruled you can ask the question. Please continue.

Q. (By Mr. MANN.) Were you, Miss Tesoro, forced or threatened to sign the contract which you say you signed on September 20th, a copy of which has been offered as Board's exhibit 10 for identification?—A. No.

Mr. MANN. That is all.

Petitioner relies entirely upon the remark of Mr. Graham, the Board counsel, that "Complaint embodies none of these contracts." There is nothing mysterious about the meaning of this remark in its context. The complaint did not *physically* embody either the contracts which Sanford unsuccessfully sought to impose upon the employees during the conference of July 29th (R. 380, 50, 54, 96, 105, 145, 150) or the contracts which petitioner succeeded in making with the Committee and its employees on or about September 20th (R. 586–587, 372–382; Bd. Exh. 10, R. 850). Any construction of the term "embodies" as the equivalent of "mentions" rather than "physically exhibits" requires the improbable assumption that counsel for the Board was unacquainted with the allegations of the complaint (R. 777, 778–779). Mr. Graham was seeking to end the ntroversy between counsel for the petitioner and counsel for the Union as to which of the two groups of contracts was in issue (R. 378–381) by pointing out that the contracts of September 20th were the ones whose validity was challenged.[21] Hence his statement: "In order to get the right effect, we are going to let these in" (R. 381). "These," as Mr. Mann's following question to the witness shows, were the contracts of September 20th (Bd. Exh. 10, R. 850). Clearly there was no concession that the contract issue was removed from the case.

[21] It is clear that the contracts referred to in the complaint were those of September 20th. The earlier contracts had been merely *proposed* by the petitioner. Only the later contracts could have been "signed" by the employees or made a "condition of employment" as the complaint alleged (R. 777).

Moreover, petitioner's counsel immediately called for an interpretation of Mr. Graham's remark, and was told by the Trial Examiner that he could continue his line of questioning designed to prove that the contracts of September 20th were valid, as petitioner had expressly alleged in its answer (R. 794–795). In addition, at the completion of the Board's case, and subsequent to the colloquy described above, counsel for petitioner orally presented a motion to dismiss the complaint (R. 395–431) during the course of which he discussed at some length the provision of paragraph 7 of the complaint relating to the signing of individual contracts (R. 423–425). There is not a word suggesting that counsel believed the contracts were not in issue. Finally, petitioner's counsel himself *thereafter* called Healey, an officer of the petitioner, to prove the validity of the contracts. It is not reasonable to suppose that either counsel would have examined (R. 581–604) and cross-examined (R. 696–711) Healey at length as to the terms and manner of making of the contracts if their validity was not at issue in the case. The conclusion is irresistible that petitioner was not in fact misled.

A further answer to the contention is that petitioner urged it at no time prior to the initiation of enforcement proceedings in the Circuit Court of Appeals. Section 10 (e) of the Act forbids any consideration by the courts of an objection that has not been urged before the Board, unless the failure to raise such objection is excused because of "extraordinary circumstances." Petitioner has offered no excuse whatever for its neglect to urge its contention before the Board.

2. Petitioner's second contention (Brief pp. 27–33) is that the lack of notice to the Committee and to the individual employees is fatal to the validity of the order directing it to discontinue the contracts. The precise nature of this objection should be noted at the outset. Petitioner does not—and cannot—assert that it did not receive notice and hearing on this issue, but complains only of the failure to afford such notice and hearing to the Committee and to the individual employees (Pet. for Cert., p. 8; Brief pp. 27–33.)[22] The complaint and the answer, both filed prior to the commencement of the hearing, clearly put the validity of the contracts in issue[23] and the question was fully liti-

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[22] The alleged deficiency of the "charge," discussed under Point IV, *infra*, pp. 64–72, is not urged as a denial of notice and hearing and is not relevant to this issue. It is asserted as a defect of "jurisdiction" of the Board arising from omission to have a formal amendment made to the charge (Pet. Brief, pp. 20–24).

[23] The complaint alleged that petitioner "has made signing of individual contracts a condition of employment" (R. 777) and that by such and other acts petitioner "did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act" (R. 779). Petitioner's answer, filed the day on which the hearing commenced (R. 16, 798), alleged that "the respondent [petitioner here], in strict conformance and compliance with the provisions of the National Labor Relations Act, did confer and bargain with the committee duly designated by the workers, as a result of which it has actually negotiated and agreed with its employees with reference to wages, hours, and conditions of employment, which said terms of the agreement reached have been embodied in written contracts duly and properly signed and executed by the respondent, and collective bargaining committee, and the employees of the respondent, who have indicated their

gated by the petitioner and the Board (R. 372–382, 396, 581–604, 696–711, 823, 835). The contention that the omission of notice and hearing to others invalidates the order against petitioner is unsound for numerous reasons.

(a) The present case is governed by the decision of this Court in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 271. Accord: *National Labor Relations Board* v. *Pacific Lines*, 303 U. S. 272. The issue in the *Greyhound* case was whether the employer had created and fostered a certain "inside" labor organization of its employees and dominated its administration in violation of Section 8 (1) and (2) of the Act. The Board, after finding that such violations had occurred, ordered the employer to cease and desist from those practices and, in addition, completely to disestablish the organization as collective bargaining representative of the employees. The Circuit Court of Appeals for the Third Circuit set aside the Board's disestablishment order on the ground that the employee association should have been given opportunity to participate in the proceeding (91 F. (2d) 178, 179 (C. C. A. 3d)). This Court reversed and granted enforcement in full of the order of the Board, specifically holding that (303 U. S. at 271)—

> As the order did not run against the Association it is not entitled to notice and hearing. Its

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approval and consent to, and ratification of such contracts (R. 794–795. * * * That such contracts are in full force and effect, and all of the parties thereto are operating thereunder, pursuant to its terms and provisions, in strict accordance with the terms of the National Labor Relations Act" (R. 795).

presence was not necessary in order to enable the Board to determine whether respondents had violated the statute or to make an appropriate order against them.

The present Collective Bargaining Committee, like the "inside" association in the *Greyhound* case, was found upon ample evidence to have been initiated, sponsored, and dominated by petitioner in violation of Section 8 (1) and (2) of the Act. In this case, likewise, the petitioner was ordered by the Board to cease recognizing and completely disestablish the Committee as the representative of any of its employees (R. 895–896). Petitioner concedes (Brief, p. 28) that under the rule of the *Greyhound* case the Board may properly issue such an order without notice to the labor organization. It insists, however, that the rule does not apply where, as here, "recognition" is embodied in a contract (R. 850, 851, 855–856, 857). We submit that there is no justification for distinguishing between the two forms of recognition so far as the Board's power to order disestablishment is concerned.

It is a mistake to assume, as the petitioner apparently does, that the interest of the Association which was affected by the order in the *Greyhound* case differs from that of the Committee in the present case. A union's primary interest, affected equally by the order in each case, is its claim to recognition as the representative of the employees in collective bargaining with the employer. Recognition is the pivotal factor in collective bargaining. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virgin-*

ian Railway Co. v. *System Federation No. 40,* 300 U. S. 515. Without recognition of a bargaining agency collective bargaining cannot take place. The most valuable asset that a union can have, therefore, is the employer's recognition of it as the bargaining agency of its employees. The basic significance of recognition in collective bargaining has been evidenced by the willingness of this Court, in a proper case, to protect the right thereto by injunction. *Virginian Railway Co.* v. *System Federation No. 40, supra; Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks, supra,* at 571.[24] The employer may confer recognition on a union by written contract or by tacit agreement. The form in which recognition is embodied does not change its vital significance to the union and should not be permitted to obscure the effect on the union of an order to cease recognition and to disestablish the union as the bargaining agency.[25] It is unrealistic to contend that the order of the Board affects substantial interests of the union

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[24] See also Commons, John R., and Andrews, John B., *Principles of Labor Legislation* (Harper & Bros., 4th Ed., 1936), p. 372; Catlin, W. B., *The Labor Problem* (Harper & Bros., 1926), pp. 317, 327; Rufener, L. A., *Principles of Economics* (Houghton-Mifflin Co., 1927), p. 399; Twentieth Century Fund, Inc., *Labor and Government,* (1935), p. 47; Yoder, Dale, *Labor Economics and Labor Problems* (1933), p. 433; U. S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Company Claims,* Bulletin No. 634, Chs. VII, XXII.

[25] We do not mean to minimize the value to a *bona fide* union of having recognition embodied in a written contract. The necessity for written recognition usually arises because of the employer's expressed or latent hostility to the union. Obviously, there is no such necessity where the union is dominated by the employer.

where recognition is granted by contract but does not where recognition is noncontractual.

The order in this case to discontinue the contracts is necessary, as we have seen (*supra*, pp. 42–45), to effectuate the complete disestablishment of the Committee and to remove the consequences of petitioner's unfair practices. Plainly, the discontinuance of the contracts is "the only effective way of wiping the slate clean and affording the employees an opportunity to start afresh in organizing for the adjustment of their relations with the employer." *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, No. 20, this Term, p. 7. The Circuit Courts of Appeals, without exception, have enforced such orders, as did the court below, and have repudiated the distinction which petitioner seeks to make. Following the *Greyhound* decision, they have upheld Board orders to discontinue contracts conferring recognition on company-dominated labor organizations and perpetuating unfair practices of employers despite the absence of notice to those organizations or the employees. *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 99, 100 (C. C. A. 2d), enforcing 4 N. L. R. B. 922, 944; *National Labor Relations Board* v. *Ronni Parfum, Inc.*, 104 F. (2d) 1017 (C. C. A. 2d) enforcing 8 N. L. R. B. 323, 334; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 169 (C. C. A. 3d), certiorari denied November 6, 1939, enforcing 6 N. L. R. B. 171, 203; *Titan Metal Mfg. Co.* v. *National Labor Relations Board*, 106 F. (2d) 254 (C. C. A. 3d), certiorari denied December 4, 1939, enforcing 5 N. L. R. B. 577,

597; *National Labor Relations Board* v. *Eagle Mfg. Company*, 99 F. (2d) 930 (C. C. A. 4th), enforcing 6 N. L. R. B. 492, 507.

(b) The procedure followed by the Board in this case and approved in the *Greyhound* decision complies fully with the requirements of notice and hearing set up by Congress. The Act requires a complaint to be served only upon persons charged with engaging in unfair labor practices (Section 10 (b)). Only employers can be found to have engaged in such practices (Section 8), and a labor organization is expressly declared not to be an employer (Section 2 (2)). Accordingly, under the Act only employers are required to be notified or joined as parties. It is only upon employers that an order of the Board can impose any enforceable obligation.

The omission of a requirement of notice to persons other than employers, such as the Committee or the individual employees, who might indirectly be affected by the orders of the Board, cannot be thought inadvertent. The rights of others are protected under the statute (1) by provision for intervention before the Board, and (2) by the right to challenge the order in the Circuit Court of Appeals. Thus, the Committee or the employees could have sought permission to intervene in the proceedings before the Board under Section 10 (b) of the Act. After the Board's order was issued, and whether or not either had previously intervened before the Board, the Committee or the employees might have filed a petition for review of the order, as a "person aggrieved," in the Circuit Court of Appeals under Section 10 (f). If after filing such a petition the Com-

mittee or the employees had desired further hearings on the facts, they could have petitioned the court for leave to adduce additional evidence (Sections 10 (e) and 10 (f)). These provisions of the Act are comprehensive. They preclude any inference that the presence of the Committee or the individual employees was affirmatively necessary to the Board's jurisdiction to issue the order here in question. They suggest that Congress definitely intended to exclude any requirement of notice to persons other than employers.

(c) No question of the constitutional adequacy of the statutory procedure, as applied to the Committee and the individual employees, is before this Court or was before the court below. Petitioner was afforded notice and full hearing on the issue of the validity of the contracts. It could not complain that the Board's order, pursuant to the statute, infringed rights of the Committee or the individual employees under the statute, even if the order did so. The employer "can complain only of the infringement of its own constitutional immunity, not that of its employees." *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 558, and cases there cited. The rule is equally applicable to a claim that notice and hearing has been denied. *Plymouth Coal Co.* v. *Pennsylvania,* 232 U. S. 531, 544; *Tyler* v. *Judges,* 179 U. S. 405, 409–410. Compare *Aikins* v. *Kingsbury,* 247 U. S. 484, 489; *Straus* v. *Foxworth,* 231 U. S. 162, 170–171.[26]

[26] The risk to petitioner of a multiplicity of suits (Pet. Brief, pp. 49–50), if it exists, cannot seriously be regarded as a denial of due process. Compare *Worcester County Co.* v. *Riley,* 302 U. S. 292, 299, and cases there cited. The contention is refuted by

(d) Even if a constitutional objection had been properly raised, the statutory procedure appears clearly to be adequate constitutionally to support the order in question. The Board proceeding was brought to vindicate the rights of the Government, not those of private parties,[27] and the order neither imposes nor purports to impose any enforceable obligation upon the Committee or the individual employees. The opinion in the *Greyhound* case, 303 U. S. 261, 271, plainly disposes of the contention that the Committee or the employees were entitled to notice and hearing. The order did not run against them and their presence was not necessary in order to determine whether the petitioner had violated the statute or to make an appropriate order against it (303 U. S. at 271).

Petitioner (Brief, pp. 27–33) refers to the equitable rule of indispensable parties. That rule, of course, expresses a principle of administration of courts

innumerable cases denying interpleader to a stakeholder faced with inconsistent claims. See Chafee, *Interpleader in the United States Courts* (1932), 41 Yale L. J. 1134, (1933) 42 Yale L. J. 41. Furthermore, the argument that such a risk exists, if sound, completely answers petitioner's contention (Brief, pp. 30–33, 50) that the Committee and the employees are, in the equitable sense, "indispensable." An absent party is not indispensable to a proceeding which leaves open the effective assertion and protection of his rights. *Roos* v. *Texas Co.*, 23 F. (2d) 171, 172 (C. C. A. (2d)), and cases there cited.

[27] *Agwilines, Inc.* v. *National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5th); *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179 (C. C. A. 6th); *Blankenship* v. *Kurfman*, 96 F. (2d) 450 (C. C. A. 7th); of *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 266–267. "No private right of action is contemplated." House of Representatives Committee on Labor, Report No. 1147, p. 24.

of equity (*Elmendorf* v. *Taylor*, 10 Wheat. 152, 166–167) and not a requisite of due process (*McCaughey* v. *Lyall*, 224 U. S. 558; compare *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 233). Numerous decisions by courts of equity, moreover, are persuasive of the validity of the statutory procedure. Thus, in both the *Texas & New Orleans* case, 281 U. S. 548, and the *Virginian Railway* case, 300 U. S. 515, recognition was ordered withdrawn—expressly in the first case and by necessary effect in the second—from company-dominated unions who were not parties to the suits. Similarly, in *General Investment Co.* v. *Lake Shore Ry.*, 260 U. S. 261, 283, 285–286, the Court held that one of certain railroads which had contracted to submit to their stockholders an agreement for consolidation was not an indispensable party in a suit to enjoin another of the contracting parties from consummating the consolidation. Again, equity courts have frequently declared contracts invalid, or prohibited their making in the future, in suits to which only one of the parties was a respondent. E. g., *Paramount Famous Corp. v. United States*, 282 U. S. 30; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 456; *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373; *Butterick Co.* v. *Federal Trade Commission*, 4 F. (2d) 910 (C. C. A. 2d). See also *Hinderlider* v. *La Plata Co.*, 304 U. S. 92, 110–111.[28] The present order, directed solely

[28] There are numerous cases enjoining a defendant from doing what an absent person not a party to the suit has contracted with him that he may do. *New York Phonograph Co.* v. *Jones*, 123 Fed. 197 (C. C., S. D. N. Y.); *E. L. Husting Co.* v. *Coca Cola Co.*, 194 Wis. 311, 216 N. W. 833, rehearing denied, 205 Wis. 375, 238

against the petitioner, and based on issues relating only to the conduct of petitioner, seems to be well within the analogous authorities.

(e) The *Consolidated Edison* case, 305 U. S. 197, upon which petitioner relies (Brief, pp. 28–30), was concerned with a wholly different situation. In the opinion of the Court, there was no basis for a finding that the contracts with the Brotherhood and its locals were a consequence of the unfair labor practices found by the Board or that the contracts in themselves thwarted any policy of the Act or that their cancellation would in any way make the order to cease the specified practices any more effective (305 U. S. at 236). The difference between the *Consolidated Edison* and the *Greyhound* cases is apparent.

The *Greyhound* case, 303 U. S. 261, shows that the Government may try the issue whether unfair labor practices have been committed between itself and the employer and, upon a determination against the employer, may order him to take whatever steps are appropriate to prevent the recurrence of the unfair practices. The fact that third parties may be substantially affected by the order against the employer does not make their presence necessary in order to enable the Board to determine whether the employer has violated the statute or to make an appropriate order against

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N. W. 626, certiorari denied, 285 U. S. 538; *NeKol Co.* v. *Becker*, 318 Mo. 292, 300 S. W. 1108; *Alcazar Amusement Co.* v. *Mudd & Calley Amusement Co.*, 204 Ala. 509, 86 So. 209; *Meyer* v. *Washington Times Co.*, 76 F. (2d) 988 (App. D. C.), certiorari denied, 295 U. S. 734. See *Fidelity & Deposit Co.* v. *State of Montana*, 92 F. (2d) 693, 698 (C. C. A. 9th).

him (303 U. S. at 271). The *Consolidated Edison* opinion nowhere suggests that persons other than employers are necessary parties to the determination whether an employer has violated the rules of conduct laid down in the Act. The opinion suggests, merely, that the substantial interests of persons who have not been given notice and hearing may not be affected by an order not shown by the record to be appropriate or essential to remedying unfair labor practices.

This construction of the *Consolidated Edison* case is supported, we submit, by the language of the Court. The opinion expressly distinguishes the *Greyhound* case on the ground that the Association there in question was found upon evidence to have been created and fostered and dominated in its administration by the employer in violation of Section 8 (2) (305 U. S. at 233). This ground of distinction shows that the Court did not intend in the *Consolidated Edison* case to decide that anyone other than the employer is a necessary party in order for the Board to determine whether the employer has committed unfair labor practices. The Association in the *Greyhound* case could not be determined to be company-dominated until after the evidence was taken and the findings made by the Board. The explanation is that domination by an employer is an unfair labor practice and that issue is triable only between the Government and the employer (303 U. S. at 271).

The continuation of the contracts in the *Consolidated Edison* case was not, under the decision of the Court, an unfair labor practice. The contracts did not confer recognition on a company-dominated labor organiza-

tion, nor were they regarded by the Court as a consequence of the unfair practices of the employer or as in themselves thwarting any policy of the Act (303 U. S. at 232, 236). On the basis of these conclusions the order to desist from enforcing the contracts could not be considered as required by the mandatory duty of the Board to prevent unfair labor practices (see 303 U. S. at 265). The order still might have been upheld without a requirement of notice and hearing to others if it was necessary to make the command to desist from the other unfair labor practices effective (cf. 303 U. S. at 271), but the Court held that there was no basis for such a finding (305 U. S. at 236). Hence, in the opinion of the Court, the order to desist from enforcing the contracts bore so little relation to remedying the unfair practices of the employer that notice and hearing to others who were substantially affected by the order was required (305 U. S. at 233).[29] Had the order been supportable, in the view of the Court, as an essential step in preventing unfair labor practices by the employer, the *Greyhound* rule would have applied and the fact that others were indirectly affected by the order against the employer would have been immaterial (303 U. S. at 271).

The order in question here, as we have indicated (*supra*, pp. 50–54), is clearly covered by the rule in the *Greyhound* case. The validity of the contracts was put in issue and was fully litigated (*supra*, pp. 49–50).

[29] The Court's determination that, under the circumstances, the validity of the contracts should have been, but was not, placed in issue and litigated was an independent ground sufficient to support the refusal to enforce the order in the *Consolidated Edison* case (see 305 U. S. at 234–235, 238).

The only issue necessary to the determination whether an order to cease enforcing the contracts should issue was whether petitioner's enforcement of them was an unfair labor practice. That issue was triable only between the Government and the employer. Upon the Board's finding against the petitioner, the order to discontinue the contracts was mandatory under Section 10 (c). The *Greyhound* case, 303 U. S. at 265. In addition, the order to discontinue the contracts was essential to make effective the other provisions of the Board's order, in particular, the direction to withdraw recognition from and to disestablish the company-dominated Committee (*supra*, pp. 42–45). The order is plainly remedial, and not "punitive," in character and is directed solely against petitioner. Under these circumstances, there is no occasion for joining as parties anyone other than petitioner. Surely no one else should be permitted to urge that conduct of the petitioner in violation of the rights of the public must be permitted to continue merely because he has an interest in it. The *Greyhound* case, 303 U. S. 261, 271, plainly refutes such a contention. The argument comes with even less grace when advanced by the petitioner.

(f) Petitioner urges (Brief, pp. 30–33, 50) that the equitable rule of indispensable parties prevents enforcement of the order in question here. We submit that there is no merit in the claim. In the first place, there is no clear indication in the authorities that the equitable rule of indispensable parties is applicable to a suit by the Government to enjoin the continuance of activity in violation of public rights. We have found no decision of the Court refusing such relief at the suit

of the Government merely on the ground that an absent party had an interest in the illegal activity. There are several cases in which such relief has been granted despite the absence of parties vitally concerned in the result of the proceeding. The *Greyhound* case, 303 U. S. 261; *Paramount Famous Corp.* v. *United States*, 282 U. S. 30; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 456. See *Federal Trade Commission* v. *Beech-Nut Co.*, 257 U. S. 411, 451, 453.[30] The *Consolidated Edison* case is not an exception to this line of authorities. The direction there refused enforcement was regarded as in no way making the command enjoining the unlawful activity more effective (305 U. S. at 236). Such an established practice of enjoining illegal activity without insisting strictly upon observance of the equitable rule of indispensable parties is not without significance. It is expressive of a doubt whether rules developed to aid the Chancellor to do complete justice among private litigants are fully applicable in proceedings by the Government to vindicate the public interest. The public character of the rights enforced in Board proceedings and the restricted scope (as to parties) of the relief sought are themselves justification for a departure from Chancery practice which aims at settling all the rights

[30] In the *United Shoe Machinery* case, supra, the Court said that "no right of the lessee could be injuriously affected by the injunction which was prayed in the case" (258 U. S. at 456). If this statement refers to a denial of legal injury, we agree with it; but if it purports to be stating an *economic* result, the question arises whether anyone can confidently make such a determination without hearing the affected party on that issue.

in controversy. Compare *Shields* v. *Barrow*, 17 How. 129, 136).

A second obstacle to acceptance of the argument is that procedure before the Board is, except for possible qualifications where constitutional rights are concerned, within the control of Congress. The procedure established by Congress, in our opinion (*supra*, pp. 54–55), precludes any inference that notice and hearing to others than employers is a requisite of jurisdiction to issue the remedial order in question here. There certainly is slight basis, if any, for concluding that Congress intended to adopt as part of the statutory procedure to prevent unfair labor practices a vague formula, not susceptible of accurate description, as to indispensable parties. See *Niles-Bement-Pond Co.* v. *Iron Moulders Union*, 254 U. S. 77, 80. The *Consolidated Edison* case does not hold that Congress intended to adopt equity practice in proceedings under the Act. We think the opinion clearly indicates that the suggestion that the Brotherhood and its locals were entitled to notice and hearing under the circumstances was prompted by doubts as to the constitutional validity of the Act if not so construed (305 U. S. at 233).[31] The proceeding in question here arises under entirely different circumstances. There is no constitutional objection properly before the Court (see p. 55, *supra*), and even

[31] The Brotherhood and its locals urged the lack of notice on their own behalf in this Court (305 U. S. at 232). There is no indication in the opinion that anyone else could have raised this objection.

if there were, there is no merit to it (see pp. 55–58, *supra*).[32]

Jurisdiction to review orders of the Board, it is true, is vested in a court with equity powers. *Ford Motor Co.* v. *National Labor Relations Board,* 305 U. S. 364, 373. But, as this Court has said, "court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coördinated action." *United States* v. *Morgan,* 307 U. S. 183, 191. We submit that a proper regard for the appropriate function of the Board in vindicating the public interest in the prevention of unfair labor practices would lead to the enforcement of the order in question here. See *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 552, and cases there cited.

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[32] For the information of the Court, we wish to point out that the present *Rules and Regulations* of the Board provide that—

Whenever the complaint contains allegations under Section 8 (2) of the Act, any labor organization referred to in such allegations shall be duly served with a copy of the complaint and notice of hearing. Whenever any labor organization, not the subject of any 8 (2) allegation in the complaint, is a party to any contract with the respondent the legality of which is put in issue by an allegation of the complaint, such labor organization shall be made a party to the proceeding. (*Art.* II, Sec. 5, *Rules and Regulations* (Series 2), effective July 14, 1939.)

IV

THE CHARGE WAS FULLY ADEQUATE TO SUPPORT THE COMPLAINT AND ORDER

The charge which initiated the present proceeding was filed by the Union on August 2, 1937. Its material provisions are as follows:

> Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that National Licorice Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (5) of said Act, in that the said National Licorice Company has by means of threat and intimidation, coerced and attempted to coerce its employees into signing individual contracts with the said company; in that the said company has called meetings of its employees and has compelled said employees to attend said meetings, and has attempted to compel said employees to form committees, not of their own choosing, to bargain collectively with the said company; in that the said company has by threat and intimidation of its employees, interfered with the formation and administration of the Labor Organization of the undersigned; in that the said company refuses to bargain collectively with representatives of the employees.
>
> The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act (R. 772–773).

Petitioner's objection (Brief pp. 20–24) to the alleged variance between the charge and the complaint was not raised at any stage of the proceedings before

the Board.[33] Having failed to afford the Board an opportunity to consider and pass upon its objection, petitioner is prevented by the language of Section 10 (e) [34] from raising the matter in the courts.

Apart from this consideration, petitioner's contention is without merit. Preliminarily, it is important to note that the alleged lack of correspondence between the charge and the complaint has no bearing upon the question whether petitioner received due notice of the contentions of the Board. It is the complaint, and not the charge, which serves to put a respondent on notice of the respects in which he is asserted to have infringed the Act, and against which he is called upon to defend. Section 10 (b) of the Act; *Board Rules and Regulations* (Series 1, as amended) Article II, Section 10; see *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333. Hence, any disparity which may exist between the charge and the

[33] An entirely different objection, namely, that the Board had allegedly erroneously failed to serve petitioner with a copy of the "original" charge, was urged in petitioner's answer; at the hearing; in a memorandum to the trial examiner; and again in the exceptions to the Intermediate Report. The Board took note of the objection in its decision and order (R. 872). Petitioner did not raise the objection before the Circuit Court of Appeals nor does it urge the point in this Court. The objection was, of course, entirely without merit, in view of the obvious fact that the proceeding arose out of the so-called "amended charge," which completely superseded and rendered irrelevant the earlier document, and was served.

[34] The relevant portion of Section 10 (e) provides "No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court * * *."

complaint goes solely to the technical question of compliance with the procedural formalities prescribed by the statute and raises no question of due process of law. Petitioner apparently makes no serious contention to the contrary. We turn, therefore, to the question of the extent, if any, to which the complaint is at variance with the charge, and the legal effect of such variance as may exist.

1. The charge sets forth that petitioner "coerced and attempted to coerce its employees into signing individual contracts" in violation of Section 8 (1), and "attempted to compel said employees to form committees, not of their own choosing, to bargain collectively with the * * * company," in violation of Section 8 (2). The complaint (R. 777) makes almost identical allegations. Specifically, it recites that petitioner formed and initiated a labor organization of its employees at the Brooklyn plant, dominated and interfered with the administration of that organization, and has continued to do so "down to and including the date of the issuance of this complaint" (R. 777–779); that petitioner "has made signing of individual contracts a condition of employment" (R. 777); and that by these and other acts petitioner "is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act" (R. 778–779). Beyond question, then, the complaint "states the charges" with respect to the unfair labor practices, as required by Section 10 (b) of the Act and Article II, Section 5 of the *Rules and Regulations* of the Board

in force at the time of the events here under consideration.[35]

Petitioner's unlawful attempts to form and dominate a labor organization, and its efforts to induce its employees to sign individual agreements did not cease, however, as of the date of the verification of the charge. On the contrary, the same pattern of action, with immaterial variations, continued, with increasing effectiveness, from the date of the filing of the charge down to the time the complaint was issued. While the complaint, since it speaks as of a later date than the charge, embodied this subsequent conduct of petitioner, it does not set forth any new or different unfair labor practices. The unfair labor practices alleged in the complaint are the identical practices set out in the charge, chronologically extended to the date of issuance of the complaint. In the words of the Circuit Court of Appeals:

> The respondent complains that the Board's order was jurisdictionally unsupported because the "charge" on which the complaint issued, and the complaint itself, contained nothing about the formation of the company union, or the individual contracts of the respondent with the men.[36] We have held that a "charge" is a condition precedent upon the Board's power to is-

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[35] All references to the *Rules and Regulations* in this discussion are to National Labor Relations Board *Rules and Regulations*, Series 1, as amended, which were in force at the time of the events here under consideration.

[36] Petitioner's contention, summarized in the quoted language of the Court, that the charge and the complaint contained nothing about "the formation of the company union, or the individual contracts" is unsupported, since, as we have pointed out, both the charge and the complaint referred in specific terms to petitioner's

sue a complaint (*National Labor Relations Board* v. *Hopwood Retinning Co.*, 2 Cir. 98 F. 2d 97) but we need not consider here how far it confines the proceeding to matters then existing, but not included. For here no "charge" could have included the company union and it was not necessary that it should. The original controversy had resulted in a strike; the strike had failed; the company union followed on the failure; and *the Board was within its powers in treating the whole sequence as one,* and in reestablishing the workmen's freedom, by ending the company union's privilege to represent them (R. 913). [Italics added.]

2. Although the complaint in the instant case did not in fact go beyond the charge by adding allegations as to new unfair labor practices, petitioner's position is no stronger if it be assumed, *arguendo,* that the complaint sets forth unfair practices not described in the charge. Section 10 (b) requires that the complaint "state the charges" in respect to the unfair labor practices, as was done in the instant case. There is nothing in the Act which justifies the inference that once the Board's powers have been invoked by the filing of a charge against an employer, the exercise of those powers is confined to the precise matters stated in the charge. To contend otherwise is, in our opinion, to misapprehend both the administrative machinery and the purpose of proceedings under the Act.

As to the first point, charges are commonly prepared and filed by laymen, chiefly working men and the unions

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attempts to establish a company-dominated union, and to its efforts to impose individual contracts upon the men (R. 772–773, 777–779).

to which they belong. Such documents are not legal pleadings. If they were embodied without alteration or amendment in complaints, decidedly imperfect legal instruments would result.

Congress did not, however, command that the Board's complaint must embody the charge without modification or addition. Section 10 (b) does not provide that the complaint shall state *only* the charges. The provision of that section for amendment of the complaint by the Board "in its discretion at any time prior to the issuance of an order based thereon" contains no reference to the need of a correspondingly amended charge.[37] Furthermore, Congress by clear implication authorized the Board to conduct an investigation into the matters alleged in the charge prior to issuing a complaint. Sections 10 (b) and 11 (1). Common sense teaches that in such an investigation the Government is likely to uncover evidence of additional and supplementary unfair labor practices. Surely it is unreasonable to contend that the Board is debarred from embodying the result of its investigation in its complaint without first going through the useless formality of furnishing the charging party with a statement of the findings of the Board's investigators and requesting that such party file a supplemental charge setting forth the results of the investigation.

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[37] In *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, the original complaint related to the discharge of five employees. During the course of the hearing the complaint was amended to add the name of another employee, Solosy, to those alleged to have been wrongfully discharged. The charge was not correspondingly amended. (See pp. 4–6 of the record in Case No. 19, U. S. Supreme Court, October Term, 1938.) The Board's order for the reinstatement of Solosy was upheld by this Court. 305 U. S., at 237.

The assertion that the Board may not take cognizance in its complaint of additional unfair labor practices which appear from the course of an investigation following the filing of a charge confuses proceedings under the Act with those between private parties in ordinary civil litigation. A proceeding before the Board is not a controversy between the party making the charge and the employer. The charge is a device for bringing an alleged violation of the Act to the attention of the Board. The Act authorizes the Board to decide in its discretion whether to issue a formal complaint, and a proceeding is commenced only if such a complaint is issued. The case or controversy then is between the Government, represented by the Board, and the respondent-employer, not between the person filing the charge and the respondent-employer. *Agwilines, Inc.* v. *National Labor Relations Board,* 87 F. (2d) 146 (C. C. A. 5th); *National Labor Relations Board* v. *Colten,* 105 F. (2d) 179 (C. C. A. 6th); *Blankenship* v. *Kurfman,* 96 F. (2d) 450 (C. C. A. 7th). The proceeding is like that under the Federal Trade Commission Act. That Act does not "provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the Commission's name, the prosecution is wholly that of the Government; * * *. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute" a proceeding. *Federal Trade Commission* v. *Klesner,* 280 U. S. 19, 25. This language is equally applicable to the National Labor Relations Act, the procedural provisions of which were in large part modeled on the Federal Trade

Commission Act. The effectuation of the important public purposes of the present statute requires that, once the Board's attention has been called, through the filing of a charge, to an alleged violation of the Act, the Board shall be empowered to prevent whatever unlawful actions its investigation may uncover. To hold otherwise is to declare that the governmental function of preventing unfair labor practices affecting commerce may be exercised only upon the terms and within the limitations prescribed by the private individual upon whose motion the proceeding was instituted by the Board. Such a result would negate the purposes of the Act and could not have been contemplated by Congress.

CONCLUSION

It is submitted that the decision of the court below, insofar as it enforced the order of the Board, was correct and should be affirmed.

Respectfully submitted.

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JANUARY 1940.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Supp. IV, Sec. 151 *et seq.*) are as follows:

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bar-

gain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a conse-

quence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage mem-

bership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the poli-

cies of this act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused

because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the

Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

The relevant provisions of National Labor Relations Board Rules and Regulations, Series 1, as amended April 27, 1936, are as follows:

ARTICLE I

SECTION 1. The terms "person," "employer," "employee," "representatives," "labor organization," "commerce," "affecting commerce," and "unfair labor practice," as used herein, shall have the meanings set forth in Section 2 of the National Labor Relations Act, a copy of which Act is appended hereto.

ARTICLE II

SECTION 1. A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization. A charge may be withdrawn only with the consent of the Regional Director with whom such charge was filed or of the Board. Upon withdrawal of any charge, the Regional Director shall dismiss any complaint based thereon.

* * * * *

SEC. 4. Such charge shall contain the following:

(a) The full name and address of the person or labor organization making the charge.

(b) The full name and address of the person against whom the charge is made (hereinafter referred to as the "respondent").

(c) A clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence.

SEC. 5. After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the "parties to the proceeding") a formal complaint in the name of the Board stating the charges and containing a notice of hearing before a Trial Examiner at a place therein fixed and at a time not less than five days after the service of the complaint. A copy of the charge shall be attached to the complaint.

* * * * *

SEC. 7. Any such complaint may be amended by the Trial Examiner or the Board in his or its discretion at any time prior to the issuance of an order based thereon, upon such terms as may be deemed just.

* * * * *

SEC. 9. If, after the charge has been filed, the Regional Director declines to issue and cause to be served a complaint, the person or labor organization making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director.

SEC. 10. The respondent shall have the right, within five days from the service of the complaint, to file an answer thereto. Such answer shall contain a short and simple statement of the facts which constitute the grounds of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation in the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Board.

* * * * *

SEC. 13. In any case where a complaint has been amended the respondent shall have an opportunity to amend his answer within such period as may be fixed by the Trial Examiner, if he amends the complaint, or by the Board, if it amends the complaint.

* * * * *

SEC. 19. Any person or labor organization desiring to intervene in any proceeding shall file a motion in writing with the Regional Director issuing the complaint setting out the grounds upon which such person or organization claims to be interested. The original of such motion shall be assigned and sworn to by the person or labor organization filing the motion, who shall file three additional copies of such motion for the use of the Board. Immediately upon filing such motion, the moving party shall serve a copy thereof upon each of the other parties to the proceeding. The Regional Director shall rule upon all such motions filed prior to the hearing, and the Trial Examiner shall rule upon all such motions filed at the hearing, in the manner set forth in Section 15 of this Article. The Re-

gional Director or the Trial Examiner, as the case may be, may by order permit intervention in person or by counsel to such extent and upon such terms as he shall deem just. The Regional Director shall cause a copy of said ruling to be served upon each of the parties to the proceeding.

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P. 4.

SUPREME COURT OF THE UNITED STATES.

No. 272.—October Term, 1939.

National Licorice Company, Petitioner, vs. National Labor Relations Board. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 4, 1940.]

Mr. Justice Stone delivered the opinion of the Court.

Apart from the sufficiency of the evidence to support an order of the National Labor Relations Board, the questions of importance presented for our decision are whether the Board has authority to order an employer not to enforce contracts with its employees, found to have been procured in violation of the National Labor Relations Act, and to contain provisions violating that act, in the absence of the employees as parties to the proceeding; and whether the Board has authority to make its order relating to the contracts, although the unfair labor practices found to affect the contracts were not set up in the charge presented to the Board, on the basis of which it issued its complaint.

On August 2, 1937, the Bakery & Confectionery Workers International Union of America, Local Union No. 405, a labor organization, affiliated with the American Federation of Labor, lodged with the National Labor Relations Board an amended charge, alleging that petitioner had engaged in certain unfair labor practices in violation of the National Labor Relations Act. After a complaint by the Board charging petitioner with unfair labor practices had been served October 7, 1937, and after hearings, the Board found jurisdictional facts, which need not be repeated, and other facts which may be shortly summarized as follows: Petitioner is engaged in business in the manufacture of licorice products which it sells and ships in commerce, employing at its Brooklyn, New York plant about one hundred and forty production employees. The Board found that early in July, 1937, the Union began to secure signatures of petitioner's employees to applications for

membership; that on July 14, 1937, ninety-nine of petitioner's one hundred and forty employees had signed applications for membership, designating the Union as the applicant's representative for collective bargaining; that the number had increased to one hundred and nine on July 19th or 20th. On that date a meeting was held between representatives of the Union and officers of petitioner, at which the Union demands were presented. The negotiations came to nothing and were promptly followed by an unsuccessful effort on the part of petitioner's representatives to circulate among the employees a petition, nominating a committee to act as their collective bargaining representative.

On July 29th a second meeting took place between representatives of the Union and the president and other officers of the company, at which the petitioner declined to recognize the Union as the bargaining representative of all the employees, and declared that it would negotiate with the Union only as the bargaining representative of its members. The meeting adjourned without reaching any agreement. On August 2nd the employees went out on strike. The plant was closed and not reopened until the conclusion of the strike on August 25th. August 5th had been agreed upon for a third meeting, and on the evening of August 2nd, after the strike had begun, the Union representatives wrote to petitioner stating that the Union was ready to meet with petitioner at any time or place which it would designate "in order to mediate the dispute and through collective bargaining arrive at a mutually satisfactory agreement." Petitioner replied, declaring that it believed the Union had called the strike. It cancelled the meeting of August 5th and asserted that it would not "set any further time for negotiations until we have a letter from you informing us as to whether or not this strike was instigated, ordered or approved by your Union or officials of the Union." Representatives of the Union denied that it had called the strike. The Board found that the strike was the result of spontaneous action by the employees because of dissatisfaction with the course of negotiations between the Union and petitioner.

On August 27th after the plant was reopened, petitioner sent a letter to each employee requesting him to return to work on August 30th. On the same day petitioner's representative met with three employees who stated that they were anxious to return to work, and asked whether they could have their own committee and bargain

with petitioner. They were informed that if they could obtain the authorization of a majority of the employees, petitioner would deal with them. Thereafter, petitioner's president, at the request of one of the three, prepared a form of letter designating a committee of workers as the Collective Bargaining Representatives of the employees and revoking the authority to any other organization. The letter was signed by the members of the committee and one hundred and ten other employees, and returned to petitioner on September 9th.

At a meeting with the Committee on September 10th petitioner's president renewed proposals for a contract, which he had made at the meetings with the Union representatives on July 20th and July 29th, stipulating for a five per cent. wage increase, time and a half for overtime, and one week's vacation with pay. The Committee's only request related to pay for holidays and a reduction of the term of the contract from five to three years, which was granted with some modification. As finally agreed upon the contract purports to be made between the petitioner, the Committee and "each and every one of the employees".[1] Petitioner furnished the Committee members with mimeographed copies of the agreement, telling them to explain it to the best of their ability to the employees, and giving explicit instructions as to the manner in which the individual contracts were to be executed. There was testimony by a number of witnesses that petitioner's president informed the employees that he would not "protect their jobs and they would not get five per cent. if they did not sign the agreement. One group of fourteen employees asked for representation on the Committee and were referred to petitioner's president, who, in refusing the request, informed them that "the Committee had been picked already. There is enough right now on the Committee." The contract is stated to be directly between the petitioner and the individual employee and under it the Committee as such has no rights or duties. It was signed by the Com-

[1] An officer of petitioner admitted that he had consulted with the Brooklyn Chamber of Commerce in forming the contracts. The contracts involved here follow the "Balleisen formula", said to be devised by L. L. Balleisen, Industrial Secretary of the Chamber. The contract "executed between the company and each workman individually and not as a collective agreement with representatives of the employees, as provided by the Act", National Labor Relations Board *v.* Hopwood Retinning Co., 98 F. (2d) 97, 100, has been held to violate the Act in National Labor Relations Board *v.* Hopwood Retinning Co., *supra;* National Labor Relations Board *v.* American Mfg. Co., 106 F. (2d) 61, 66; Matter of Atlas Bag & Burlap Co., 1 N. L. R. B. 292; Matter of Cating

mittee and one hundred and eighteen employees. The Committee appears to have functioned only so long as it was necessary to obtain the individual signatures on the contract. The benefits of the contract were limited to those employees who signed. In return the signers relinquished the right to strike, the right to demand a closed shop or signed agreement with any union. The contract also contained provisions for arbitration as to rate of wages and the number of regular hours of employment per week by an arbitrator designated by and mutually acceptable to petitioner and the Committee, but provided that the "question as to the propriety of an employee's discharge is in no event to be one for arbitration or mediation. . . ."

From these subsidiary findings of fact the Board concluded that petitioner, by refusing to bargain collectively with the Union on July 20th and July 29th and thereafter had engaged in unfair labor practices within the meaning of § 8(5) of the Act; that petitioner, by coercing and intimidating employees in the exercise of their rights to self-organization and collective bargaining, and by persuading and coercing its employees to refrain from becoming members of the Union and to sign individual contracts of employment, had engaged in an unfair labor practice within the meaning of § 8(1) of the Act, and that by initiating, sponsoring and dominating a labor organization of its employees, the Collective Bargaining Committee, it had engaged in unfair labor practices within the meaning of § 8(1) and (2) of the Act. The Board's order directed petitioner to desist from dominating and interfering with the administration of the Collective Bargaining Committee, from recognizing the Committee as representing petitioner's employees, from giving effect to petitioner's contracts with the Committee and with the individual employees, and from refusing to bargain collectively with the Union. As affirmative relief, designed to effectuate the policy of the Act as authorized by § 10(c), the Board ordered petitioner to bargain collectively, on request, with the Union; to withdraw recognition from the Committee; to inform the Committee and employees who had contracted individually that "such contract con-

Rope Works, Inc., 4 N. L. R. B. 1100; Matter of Metropolitan Engineering Co., 4 N. L. R. B. 542; Matter of David E. Kennedy, Inc., 6 N. L. R. B. 699; Matter of Art Crayon, Inc., 7 N. L. R. B. 102; Matter of Eastern Footwear Corp., 8 N. L. R. B. 1245; Matter of American Numbering Machine Co., 10 N. L. R. B. 536; Matter of Centre Brase Works, Inc., 10 N. L. R. B. 1060; Matter of Fanny Farmer Candy Shops, Inc., 10 N. L. R. B. 288; Matter of National Meter Co., 11 N. L. R. B. 320.

stitutes a violation" of the Act; that the employees are relieved from all obligations under it; that petitioner will "no longer demand its performance" and to post appropriate notices.

The Court of Appeals for the Second Circuit, upon petition of the Board for enforcement of the order, directed that it be enforced except for a modification of that part of the order which directed that petitioner recognize and bargain with the Union. The order of the Court of Appeals directed that this part of the Board's order be conditioned upon a determination in an election that the Union is still the choice as bargaining representative of a majority of the employees. 104 F. (2d) 655.

Upon a petition which challenged the authority of the Board to make so much of its order as related to the contracts with petitioner's employees, without making the employees parties to the proceeding, we granted certiorari October 9, 1939, because of the importance of the question in the administration of the National Labor Relations Act, and because of an asserted misapplication of the principles of *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261 and *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197. Of lesser moment are questions, also raised by the petition,[2] whether the Board's finding that the Union was still the authorized bargaining representative of a majority of petitioner's employees, is supported by substantial evidence and, if not, whether the Circuit Court of Appeals properly directed the Board to conduct an election to determine whether the Union still represents a majority of petitioner's employees, and, finally, whether the jurisdiction of the Board is limited to such unfair labor practices as are set up in the charge presented to the Board so as to preclude its determination that the creation of the Organization Committee and petitioner's contracts with individual employees involved unfair labor practices, since both occurred after the charge was lodged with the Board and after its complaint was served on petitioner.

1. The Board found that petitioner, on July 20th and 29th, 1937, and thereafter, refused to recognize and to bargain collectively with the representative (the Union) of a majority of its employees. If we assume, as petitioner argues, that a majority of its employees had

[2] Petitioner's brief assails the Board's order on numerous grounds not set up in his petition for certiorari. We limit our review to the questions specifically raised in the petition. Rule 38. See General Pictures Co. v. Electric Co., 304 U. S. 175, 177, 178.

freely revoked their designation of the Union as bargaining representative and chosen in its stead the Collective Bargaining Committee, these circumstances do not militate against the findings of the Board that the Union represented the employees during July and August when the petitioner refused to bargain with it, nor do they relieve petitioner from the consequences of its refusal to bargain, which was an unfair labor practice.

Since the Court of Appeals has confirmed the findings of the Board, there is no occasion here to review the evidence in detail. *Cincinnati, etc., Ry. Co.* v. *Interstate Commerce Commission*, 206 U. S. 142, 154; *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 456. It is enough, with the findings not challenged, that there is evidence that by July 20th one hundred and nine of petitioner's one hundred and forty employees had signed applications for membership in the Union, designating it as the applicant's representative for collective bargaining, and that on that date negotiation began between petitioner and the Union representatives which was continued until August. The evidence shows that attempts by petitioner between that date and July 20th to circulate a petition among its employees nominating a committee to act as their collective bargaining representative failed. A few employees signed. Then, a number cancelled their signatures. The petition was returned to the petitioner's superintendent and was destroyed by an assistant secretary of the company. There is testimony that at the meeting with the Union representatives on July 29th petitioner's president declined to recognize the Union as the bargaining representative of all the employees, and declared that he would negotiate with it only as the bargaining representative of the Union members, refusing to bargain with it as the representative of all the employees, a plain violation of the Act. §§ 8(5), 9(a). This was followed by petitioner's refusal, on August 2nd, to negotiate with Union representatives. There was also evidence from which the Board could have found that the negotiations on July 20th and July 29th were not entered into by the petitioner in good faith, and were but thinly disguised refusals to treat with the Union representatives.

In view of the evidence already noted of the choice of the Union as bargaining representative by a large majority of the employees between July 14th and 20th, of the complete failure of petitioner's efforts to disturb that representation between the 20th and the 29th,

there was substantial evidence to support the Board's conclusion that the Union was the choice as bargaining representative of appellant's employees during July and in August, at least until the 5th, when petitioner refused to treat with the Union.

As will presently appear, the bargaining committee and the contracts obtained through its mediation were both the products of unfair labor practices, and the Committee, under the Board's order, was not entitled to recognition as the bargaining representative of the employees. Such injury, if any, as the petitioner might have suffered from the Board's order requiring it to recognize and bargain with the Union, is avoided by the direction of the Court of Appeals that this part of the order be conditioned upon a determination by an election that the Union is still the choice of a majority of the employees. The Board has not petitioned for certiorari and does not complain of this direction.

2. The petition for certiorari does not assail the findings of the Board that petitioner's officials initiated the organization of the Committee, and that it "sponsored and dominated the formation of the Committee and thereafter dominated its administration and contributed support to it". We shall not re-examine those issues here, more than to say that the evidence discloses that the purpose of creating the Committee was to secure the contracts and by the contracts the Committee was left without any further function to perform except to join with the employer in choosing an arbitrator for the arbitration of specified labor disputes.

But the petition raises the question whether the terms of the contract, as the Court of Appeals held, violate the National Labor Relations Act and it challenges the authority of the Board because of the absence of the individual employees, as parties, to make any order respecting the contracts. The contracts, as the Board found, were not only procured through the mediation of a company-dominated labor organization, but they were the means adopted to "eliminate the Union as the collective bargaining agency of its employees". We think it plain also that by their terms they imposed illegal restraints upon the employees' rights to organize and bargain collectively guaranteed by §§ 7 and 8 of the Act.

By the contract each employee agreed not "to demand a closed shop or a signed agreement by his employer with any Union". This provision foreclosed the employee from bargaining for a closed shop or a signed agreement with the employer, frequent

subjects of negotiation between employers and employees, see *Consolidated Edison Company* v. *National Labor Relations Board, supra,* 236, *et seq.; National Labor Relations Board* v. *Sands Mfg. Co.,* 306 U. S. 332, 342; cf. *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 553, 555, note 7. In addition the restriction upon the employee's right to ask a signed agreement extending only to agreements with "any union" is in plain conflict with the public policy of the Act to encourage the procedure of collective bargaining, see § 1, since it discriminates against labor organizations by forbidding signed contracts with labor unions while it permits them with the individual workers. See *Consolidated Edison Co.* v. *National Labor Relations Board, supra,* 236.

It likewise forestalls collective bargaining with respect to discharged employees, first providing that a discharged employee may submit to the employer facts indicating that his discharge was unreasonable and then stipulating that the "question as to the propriety of an employee's discharge is in no event to be one for arbitration or mediation." The effect of this clause was to discourage, if not forbid any presentation of the discharged employee's grievances to appellant through a labor organization or his chosen representatives, or in any way except personally.

Since the contracts were the fruits of unfair labor practices, stipulated for the renunciation by the employees of rights guaranteed by the Act, and were a continuing means of thwarting the policy of the Act, they were appropriate subjects for the affirmative remedial action of the Board authorized by § 10 of the Act. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc., supra,* 265; *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.,* No. 20, this term, decided December 4, 1939. Hence the Board was free by its order to direct that the appellant should take no benefit from the contracts unless it was without authority to act because the individual signers of the contracts had not been made parties to the proceeding. It is urged that in the absence of the employees who signed the contract, the Board was powerless to declare it void and of no effect as to those employees, and that consequently it could make no order forbidding petitioner to make use of the contracts as the means of defeating the policy and purposes of the Act.

Consolidated Edison Co. v. *National Labor Relations Board, supra,* is not decisive of this question. There, page 236, after point-

ing out that the Board's "power to command affirmative action is remedial, not punitive, and is to be exercised in the aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act", decision was rested specifically on the ground that "here, there is no basis for a finding that the contracts with the Brotherhood and its locals were a consequence of the unfair labor practices found by the Board or that these contracts in themselves thwart any policy of the Act or that their cancellation would in any way make the order to cease the specified practices any more effective."

It is elementary that it is not within the power of any tribunal to make a binding adjudication of the rights *in personam* of parties not brought before it by due process of law. *Pennoyer* v. *Neff*, 95 U. S. 714; *Riverside and Dan River Cotton Mills* v. *Menefee*, 237 U. S. 189; cf. *Arizona* v. *California*, 298 U. S. 558, 571, 572. For that reason there is no occasion to consider now how far the contract rights, if any, of the employees may be passed upon by the Board and their exercise restricted by its order in proceedings to which the employees have been made parties. As the Board's power can be effectively exercised only upon petitioner, the employees are entitled to notice and hearing only if the statute requires them to be made parties to the proceeding. Consequently the only question we are called on to decide is whether, in the circumstances of this case, the exercise of the Board's authority is such a departure from accepted modes of procedure as rightly to be regarded as beyond the power conferred on the Board by § 10 of the Act.

The proceeding authorized to be taken by the Board under the National Labor Relations Act is not for the adjudication of private rights. No. 342, *Amalgamated Utility Workers, etc.*, v. *Consolidated Edison Co., et al.*, decided this term; H. Rept. No. 1147, 74th Cong., 1st Sess., Committee on Labor, p. 24; cf. *Federal Trade Commission* v. *Klesner*, 280 U. S. 19. It has few of the indicia of a private litigation and makes no requirement for the presence in it of any private party other than the employer charged with an unfair labor practice. The Board acts in a public capacity to give effect to the declared public policy of the Act to eliminate and prevent obstructions to interstate commerce by encouraging collective bargaining

and by protecting the "exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment. . . . ." § 1. The immediate object of the proceeding is to prevent unfair labor practices which, as defined by §§ 7, 8, are practices tending to thwart the declared policy of the Act. To that end the Board is authorized to order the employer to desist from such practices, and by § 10(c) it is given authority to take such affirmative remedial action as will effectuate the policies of the Act. *National Labor Relations Board* v. *Pennsylvania Greyhound, supra.*

In a proceeding so narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights. Ordinarily where the rights involved in litigation arise upon a contract, courts refuse to adjudicate the rights of some of the parties to the contract if the others are not before it. *Shields* v. *Barrow*, 17 How. 130, 140; *Carroll* v. *New York Life Ins. Co.*, 94 F. (2d) 333; cf. *Waterman* v. *Canal-Louisiana Bank Co.*, 215 U. S. 33, 48. Such a judgment or decree would be futile if rendered, since the contract rights asserted by those present in the litigation could neither be defined, aided nor enforced by a decree which did not bind those not present.

But different considerations may apply even in private litigation where the rights asserted arise independently of any contract which an adverse party may have made with another, not a party to the suit, even though their assertion may affect the ability of the former to fulfill his contract. The rights asserted in the suit and those arising upon the contract are distinct and separate so that the Court may, in a proper case, proceed to judgment without joining other parties to the contract, shaping its decree in such manner as to preserve the rights of those not before it. *General Investment Co.* v. *Lake Shore Ry.*, 260 U. S. 261, 285, 286; *American Brake Shoe & Foundry Co.* v. *Interborough Rapid Transit Co.*, 10 F. Supp. 512, 515, aff'd 76 F. (2d) 1002; *Fidelity & Deposit Co. of Maryland* v. *Montana*, 92 F. (2d) 693, 698; *Brogdex Co.* v. *Food Machinery Co.*, 92 F. (2d) 787, 789; *Commercial Casualty Insurance Co.* v. *Lawhead*, 62 F. (2d) 928, 931, 932; cf. *Hamilton* v. *Savannah F. & W. Ry. Co.*, 49 Fed. 412; *Howe* v. *Howe & Owen Ball*

Bearing Co., 154 Fed. 820, 828; *Alcazar Amusement Co.* v. *Mudd & Colley Amusement Co.*, 204 Ala. 509; *E. L. Husting Co.* v. *Coca-Cola Co.*, 194 Wis. 311; *Nokol Co.* v. *Becker*, 318 Mo. 292.

Here the right asserted by the Board is not one arising upon or derived from the contracts between petitioner and its employees. The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices. The public right and the duty extend not only to the prevention of unfair labor practices by the employer in the future, but to the prevention of his enjoyment of any advantage which he has gained by violation of the Act, whether it be a company union or an unlawful contract with employees, as the means of defeating the statutory policy and purpose. Obviously employers cannot set at naught the National Labor Relations Act by inducing their workmen to agree not to demand performance of the duties which it imposes or by insisting more than in a private litigation, that the employer's obedience to the Act, cannot be compelled in the absence of the workers who have thus renounced their rights.

The Board's order runs only against petitioner. It directs that it shall cease recognizing the Committee as the representative of any of the employees for the purpose of dealing with petitioner concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; that it shall not "give effect" to the contracts with its employees; that it notify each employee that the contract violates the Act and that petitioner "is therefore obliged to discontinue such contract as a term or condition of employment, and the employees are released from its obligations and the respondent [petitioner here] will no longer demand its performance", and that it "will no longer offer, solicit, enter into, continue, enforce or attempt to enforce such contracts with its employees."

The effect of the Board's order, as we construe it, is to preclude the petitioner from taking any benefit of the contracts which were procured through violation of the Act and which are themselves continuing means of violating it, and from carrying out any of the contract provisions, the effect of which would be to infringe the rights guaranteed by the National Labor Relations Act. It does not foreclose the employees from taking any action to secure an adjudication upon the contracts, nor prejudge their rights in the event of such adjudication. We do not now

consider their nature and extent. It is sufficient to say here that it will not be open to any tribunal to compel the employer to perform the acts, which, even though he has bound himself by contract to do them, would violate the Board's order or be inconsistent with any part of it. Section 10(a) and (c) of the Act commits to the Board the exclusive power to decide whether unfair labor practices have been committed and to determine the action the employer must take to remove or avoid the consequences of his unfair labor practice.

In these respects the order does not go beyond those in suits brought by the United States to restrain violations of the Sherman Act, where the injunction was broad enough to prevent the offender from carrying out contracts with persons not parties to the suits. *United Shoe Machinery Co.* v. *United States*, 258 U. S. 451, 456; *Paramount Famous Corp.* v. *United States*, 282 U. S. 30; *Interstate Circuit, Inc.* v. *United States*, 306 U. S. 208, 220. Similarly, in proceedings before the Federal Trade Commission, the order restraining unfair methods of competition may preclude the performance of outstanding contracts by the offender. Such orders have never been challenged because the holders of the contracts were not made parties. E.g. *Butterick Co.* v. *Federal Trade Commission*, 4 (F. (2d) 910; *Q.R.S. Music Co.* v. *Federal Trade Commission*, 12 F. (2d) 730; *J. W. Kobi Co.* v. *Federal Trade Commission*, 23 F. (2d) 41. Cf. *Federal Trade Commission* v. *Beech-Nut Co.*, 257 U. S. 441. In *Virginian Railway Co.* v. *System Federation No. 40, supra*, 539, 540, 11 F. Supp. 621, 623, the effect of the decree was to order the employer to deal exclusively with the Federation, although the employer had a contract with an association not a party to the suit, found to be a dominated labor organization. In every case the third persons were left free to assert such legal rights as they might have acquired under their contracts. But in all; the public right was vindicated by restraining the unlawful actions of the defendant even though the restraint prevented his performance of the contracts.

As the National Labor Relations Act contemplates no more than the protection of the public rights which it creates and defines, and as the Board's order is directed solely to the employer and is ineffective to determine any private rights of the employees and leaves them free to assert such legal rights as they may have acquired under their contracts, in any appropriate tribunal, we think they

are not indispensable parties for purposes of the Board's order and the statute does not require their presence as parties to the present proceeding and there was no abuse of the Board's discretion in its failure to make them parties.[3] It is unnecessary to consider now to what extent or by what procedure it would be necessary to make the employees parties to a proceeding pending before the Board in the event that it undertook to make an order directed to the employees foreclosing any asserted rights under their contracts in order to effectuate the policies of the Act. Compare the procedure used in *New England Divisions Case*, 261 U. S. 184, 197.

The Board's order to post notices requires the notice to announce that the contracts with the employees are "void and of no effect". In order that the notice may more accurately represent the affirmative action of the Board and that misinterpretation of its action may be avoided, the order appealed from should be so modified as to omit the quoted words and direct that clause (3) of the Board's order, numbered 2(d) specifying the contents of the notice, read as follows:

(3) that the individual contracts of employment entered into between the respondent and some of its employees were made by the respondent in violation of the National Labor Relations Act; and that the respondent will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees; but this is without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts.

3. The amended charge, which initiated the present proceeding pursuant to § 10(b) of the Act, was lodged with the Board by the Union on August 2, 1937, before petitioner had succeeded in organizing the Committee and in securing the signatures of its employees to the contracts, but after petitioners unsuccessful attempt in July to deal with its employees independently of the Union. The charge, in addition to other unfair labor practices not now material, alleged

[3] Orders of the Board have been upheld which direct the employer to cease giving effect to such contracts, although no notice was given to the company-dominated labor organizations or the employees. National Labor Relations Board v. Hopwood Retinning Co., 98 F. (2d) 97, 99, 100; National Labor Relations Board v. Eagle Mfg. Co., 99 F. (2d) 930; National Labor Relations Board v. Ronni Parfum, Inc., 104 F. (2d) 1017; National Labor Relations Board v. Stackpole Carbon Co., 105 F. (2d) 167, 169; Titan Metal Mfg. Co. v. National Labor Relations Board, 106 F. (2d) 254. *Contra:* National Labor Relations Board v. Cowell Portland Cement Co., 108 F. (2d) 198; National Labor Relations Board v. Sterling Electric Motors, Inc., — F. (2d) —, 5 Labor Relations Reporter 600.

that petitioner had "coerced and attempted to coerce its employees into signing individual contracts with the said company; in that the said company has called meetings of its employees and has compelled said employees to attend said meetings, and has attempted to compel said employees to form committees, not of their own choosing, to bargain collectively with the said company; . . ."

The complaint elaborated the charge with particularity, setting forth that petitioner had formed and initiated a labor organization of its employees, dominated and interfered with the administration of that organization, and had continued to do so down to the date of the complaint, October 2, 1937; that petitioner "has made signing of individual contracts a condition of employment"; and that by these and other acts petitioner "is interfering with, restraining, and coercing its employees in exercise of the rights guaranteed by § 7 of the Act".

Petitioner contends that the charge is a jurisdictional prerequisite to the complaint and subsequent proceedings, and that they are restricted to the specific unfair labor practices alleged in the charge. See *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97. It argues that in the proceedings before the Board there was a fatal departure from the charge insofar as the Board's finding and order are concerned with the subsequent organization of the Committee and the signing of the employees' contracts. The argument is adressed only to want of power in the Board and raises no question of unfairness to petitioner in the preparation and prosecution of his case.

It is unnecessary for us to consider now how far the statutory requirement of a charge as a condition precedent to a complaint excludes from the subsequent proceedings matters existing when the charge was filed, but not included in it. Whatever restrictions the requirements of a charge may be thought to place upon subsequent proceedings by the Board, we can find no warrant in the language or purposes of the Act for saying that it precludes the Board from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board. The violations alleged in the complaint and found by the Board were but a prolongation of the attempt to form the company union and to secure the contracts alleged in the charge. All are of the same class

of violations as those set up in the charge and were continuations of them in pursuance of the same objects. The Board's jurisdiction having been invoked to deal with the first steps, it had authority to deal with those which followed as a consequence of those already taken. We think the Court below correctly held that "the Board was within its power in treating the whole sequence as one."

We find it unnecessary to discuss other points raised by the petitioner. We have considered them and find them without merit.

The order below will be modified as directed by this opinion and as so modified it will be affirmed.

So ordered.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

Mr. Justice DOUGLAS.

Mr. Justice BLACK and I see no reason or occasion for the modification of the order. For as stated in the opinion of the Court, the Board has not undertaken to pass on the rights of the employees under those contracts. Nor has any employee urged, here or below, that the order affects his contractual rights or casts a cloud on them. Whether the employees would be indispensable parties to the proceeding should the Board in order to effectuate the policies of the Act undertake to nullify their rights is a question on which we want to reserve decision until the Board passes on it and until it is put in issue by persons who have a standing to raise it.